

**IN THE HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE.**

**SINGLE BENCH : HON'BLE SHRI JUSTICE ALOK VERMA**

**Election Petition No.15/2014**

Antar Singh Darbar . . . Petitioner

Versus

Kailash Vijayvargiya & Ors. . . Respondents

Shivraj Singh Chouhan . . . Noticee No.1

Kamal Patel . . . Noticee No.2

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**CORAM**

Hon'ble Shri Justice Alok Verma.

Whether approved for reporting ? Yes

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Shri R.S. Chhabra, Shri Vibhor Khandelwal and Shri Raghuveer Singh, learned counsel for the petitioner.

Shri Shekhar Bhargava, learned senior counsel with Shri Vivek Patwa, learned counsel for respondent No.1.

Shri Purushendra Kaurav, learned senior counsel with Shri Shrey Saxena and Shri Koustubh Pathak, learned counsel for Noticee No.1.

Shri Manoj Munshi, learned counsel for Noticee No.2.

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**ORDER**

**03.11.2017**

This Election Petition is filed under Section 81 read with Sections 80 and 80-A of the Representation of the Peoples Act, 1951 (hereinafter referred to as "the RP Act") challenging the election of respondent No.1 for Madhya Pradesh Legislative Assembly held in November 2013.

2. According to the petitioner, he is a citizen of India and permanent resident of Tehsil Mhow, District- Indore. He contested election for Madhya Pradesh Legislative Assembly held in the year 1998 and was a returned candidate of Indian National Congress. In the Election of Legislative Assembly held in the year 2003, again, he contested the election and was the returned candidate of Indian National Congress. Elections were again held in November, 2013 for the Legislative Assembly and he again contested from Constituency No.209, Dr. Ambedkar Nagar, Mhow, district Indore, as candidate of Indian National Congress. This time, however, he lost the election to respondent No.1, who was the returned candidate and won the election by a margin of 12216 votes.

3. Notification for the election was issued by Election Commission of India on 4.10.2013 and by a further notification dated 01.11.2013, schedule of election programme was published. According to the programme, the election process would commence from 01.11.2013, 08.11.2013 was the last date for submission of nominations, 09.11.2013 was the last date for scrutiny of nominations, 11.11.2013 was the last date for withdrawal of candidature, 25.11.2013 was the date of polling and 08.12.2013 was the date from which counting of votes would begun.

4. As per the averments made in the petition, the relevant facts

are that respondent No.1 indulged in corrupt practices described in various paragraphs of the petition and thereby made himself liable for declaring his election to Legislative Assembly void under Section 100 of the RP Act. A prayer to declare the petitioner, as returned candidate and elected Member of M.P. Legislative Assembly from Constituency No.209, Dr. Ambedkar Nagar, Mhow, Distt.- Indore was also made.

5. According to the petitioner, on 14.11.2013, Muslim residents of the Constituency were observing festival of Muharram, when respondent No.1 participated in a function organized at Market Chowk, Mhow between 11:00 - 12:00 p.m. midnight. A huge crowd was gathered for the function, in which respondent No.1 distributed medals and trophies by way of reward to various persons in such function. This distribution of medals and trophies amounted to gratification to directly induce and influence the voters to vote for him in the election. This amounts to a corrupt practice under Section 123 of the Act. Shri Mahesh Jaiswal, President of Mhow City Congress Committee made a complaint to observer, Election Commission of India in respect of this corrupt practice, allegedly indulged in by the respondent No.1. A news item was also published in newspaper "Patrika" in its edition dated 16.11.2013. One of the resident of Tehsil- Mhow, Mohd. Yusuf S/o Mohd. Hanif was also present in the function

and he also witnessed such distribution of medals and trophies to various members of Muslim community.

6. On 19.11.2013, respondent No.1 for his election campaign visited Pensionpura area falling under this Constituency and performed Padyatra to visit and contact people door to door. During the Padyatra, many female voters welcomed respondent No.1 by performing “Aarti” and by putting “Tilak” on forehead of respondent No.1 and in return, it was alleged, that respondent No.1 placed currency notes in denomination of Rs.100/-, 500/- and Rs.1,000/-. This incident was also published in newspaper “Patrika” in its edition dated 20.11.2013 along with photographs. The petitioner is in possession of video recording of such incident, which was annexed with the petition as **Annexure P/16**. The incident was witnessed by Niraj Singh S/o Shri Mansingh, Lakhan Singh S/o Omsingh and Inder Singh S/o Bhim Singh. The currency notes were distributed only with a view to influence the voters to vote in his favour. This act of distributing currency notes in the garb of fulfilling his social responsibility under a custom of giving some amount to the person, who puts “Tilak” on your forehead, amounts to corrupt practice under Section 123 of the Act.

7. The Chief Minister of the State, Shri Shivraj Singh Chouhan (Noticee No.1) addressed a public meeting on 20.11.2013

between 12:00 to 3:00 p.m. in Padmashree Shankar Laxman Stadium, Mhow. The meeting was attended by thousands of persons. In the meeting, the Chief Minister declared that a Metro train would be provided from Mhow to Indore and he also declared that the poor persons would be provided 'Patta' of the land and by such an act, they would become 'Bhumiswamis' of the land. This amounted to a promise by the Chief Minister to the electors of the Constituency for inducing them to vote for the candidate belonging to Bhartiya Janta Party i.e. respondent No.1.

8. Respondent No.1 was also present in the meeting and thus there was his implied consent for whatever was declared or said by the Chief Minister in the meeting. Such offer and promise by the Chief Minister of the State with consent of respondent No.1 amounts to corrupt practice under Section 123 of the Act. A complaint was made by Narendra Saluja, Spokesman of Madhya Pradesh Congress Committee to the Returning Officer on 20.11.2013.

9. On 20.11.2013, in the evening at about 7:00 to 10:00 p.m. the country liquor was distributed amongst the voters residing in the villages Main and Aada-Pahad, which fell within the territorial limits of Police Station Badgonda and also within the territorial limits of Constituency No.209, Dr. Ambedkar Nagar, Mhow. The country liquor was brought in the Tata Truck 407

bearing registration No.MP-09-KC-6092 and one Kamal Patel (Noticee No.2) and a few other persons were present in such vehicle. After distributing liquor in villages Main and Ada-Pahad, the vehicle was proceeding towards other villages for distribution of liquor. The Police Station Badgonda seized the said truck with 170 boxes of country liquor on 20.11.2013. The total cost of country liquor was assessed to be Rs.2,45,000/-. Police Station Badgonda registered a Crime No.591/13 under Sections 171-B/171-E of IPC against Kamal Patel (Noticee No.2) and other persons. It was alleged that Smt. Seema Patel, who is wife of Kamal Patel is President of Nagar Panchayat, Manpur and was elected as BJP candidate. Shri Kamal Patel had been nominated as MLA representative by respondent No.1 to attend various meetings of Nagar Panchayat, Manpur, Tehsil Mhow, Distt.- Indore. Kamal Patel belonged to BJP and is a representative of respondent No.1 in Nagar Panchayat Manpur. The liquor was being distributed by Kamal Patel and other persons at the instance and consent of respondent No.1 to the voters of villages Main and Ada-Pahad to induce them to vote in favour of respondent No.1. News of seizing of such large amount of country liquor was published in newspapers "Patrika" and "Raj Express" in their edition dated 21.11.2013 published from Indore. Copy of the news items as published is annexed with the petition. Shri Dharasingh S/o

Budhiya resident of village Ada-Pahad, Shri Kamal Patel S/o Mangilal resident of village Main were present when distribution of country liquor was made by Kamal Patel and other persons to the voters of the villages, as an inducement to vote for respondent No.1 on 20.11.2013. The distribution of liquor to induce voters, on the eve of voting for the election, amounts to corrupt practice under Section 123 of the Act.

**10.** The petitioner further avers that the corrupt practices as aforesaid materially affected the election result of Returned Candidate, respondent No.1 and such practices furthered his prospects in the election. Due to such, corrupt practice election is liable to be declared void and in his place, the petitioner should be declared elected as Member of M.P. Legislative Assembly.

**11.** Respondent Nos.2 to 9 were the candidates, who contested the elections along with the petitioner and respondent No.1. They were made party to the petition in view of the fact that a relief was sought by the petitioner to declare him elected after declaring election of respondent No.1 null and void. Notices were sent to these respondents, however, none appeared on their behalf and they remained ex-parte during the proceedings, as such, the case proceeded ex-parte against them. Respondent Nos.10 and 11, being District Election Officer, Indore and SDM/SDO/Returning Officer, Mhow were made party in this petition. Their joining as

party in the petition was objected to by respondent No.1 and accepting their plea, respondent Nos.10 and 11 were deleted by Court Order dated 23.11.2015.

**12.** In the reply filed on behalf of respondent No.1 in respect of distribution of trophies and medals in a function held by Muslim community while observing festival of Muharram, distribution of medals and trophies as alleged is not denied by respondent No.1, however, according to him, he distributed the trophies as a guest in the function which was a normal practice to honour the guest invited in the function. It was also alleged that such distribution of medals did not amount to a corrupt practice under Section 123 of the Act. It was also stated that he was not aware of any complaint made by Shri Mahesh Jaiswal. It was further averred by him that such allegations were baseless and the newspaper "Patrika" was nurturing a prejudice against respondent No.1 and due to which, they used to publish those news based on incorrect facts.

**13.** In respect of distribution of currency notes to women voters, it was also denied and it was also stated that the news published in the "Patrika" newspaper was also baseless, as the newspaper was nurturing a prejudice against him.

**14.** In respect of declaration made by the Chief Minister of the State (Noticee No.1) in a public meeting, it was stated that such



declaration did not affect election of respondent No.1 materially. The facts were distorted and wrongly treated and whatever declaration was made by the Chief Minister would not amount to any corrupt practice under Section 123 of the Act. In respect of allegation regarding distribution of liquor, respondent No.1 vehemently denied all the allegations. According to him, respondent No.1 had no relation with the incident. If any offence was committed in transporting the contraband country liquor, it was for the concerning Police Station to take necessary steps in this regard. The answering respondent No.1 never consented to distribution of any liquor amongst the voters. He said Kamal Patel and Seema Patel had no connection with respondent No.1 and as no consent was given by respondent No.1, no corrupt practice could said to have been committed by respondent No.1. In this situation, it was prayed by respondent No.1 that the petition be dismissed.

**15.** Considering the fact that there were allegations made in the election petition against two persons. One is Shri Shivraj Singh Chouhan, the then the Chief Minister in the year 2013 when the election took place and Shri Kamal Patel, a resident of Manpur, notices were issued to them under Section 99 of the Act, asking them to show cause as to why they should not be named under Section 99 of the Act. In response, the noticee appeared before the

Court through their respective counsels and took part in the proceedings. They cross examined the witnesses of the petitioner and adduced evidence. This shall be considered at an appropriate stage in the judgment.

**16.** On the basis of averment made in the petition and the return filed by respondent No.1, coordinate Bench of this Court and designated Judge, framed issues. Issue Nos.1 and 2 were deleted by Court Order dated 28.06.2016.

**17.** The relevant pleadings in the petition and the return filed on behalf of respondent No.1 were not deleted in consequence of order passed by the Court on 28.06.2016 and they are still on record, however, since the issues were deleted, they are not being taken into consideration. To state briefly, these issues were deleted on the ground that corrupt practices alleged in these paragraphs, were allegedly committed before respondent No.1 was officially declared the candidate on behalf of Bhartiya Janta Party and realizing this aspect of the case, the petitioner requested for deletion of issues Nos.1 and 2 which was acceded to by court.

**18.** As such, issue Nos.3 to 7 remained to be considered by this Court. These issues are described in column 2 of the table below. Detailed discussion on these issues may be found in paragraphs that follow and inferences against each issues are recorded in column 3 of chart below:-

<b>S. No.</b>	<b>Issues</b>	<b>Findings</b>
1.	Whether on 11.10.2013 Respondent No.1 distributed money to girls and Dholwalas with the object, directly or indirectly inducing them to vote him?	These issues were deleted vide Court order dated 28.06.2016.
2.	Whether on 14.10.2013 respondent No.1 promised to voters that a good Udyog Bhawan will be made in Vijay Nagar, Indore with the object, directly or indirectly inducing them to vote him?	
3.	Whether on 14.11.2013 respondent No.1 at market Chowk, Mhow distributed medals and trophies by way of reward to various persons with the object, directly or indirectly inducing them to vote him ?	He distributed medals and trophies to various persons from the stage erected by the organizers of the event, however, such distribution did not amount to gratification and it is not proved that it was done to induce them to vote for him.
4.	Whether on 19.11.2013 respondent No.1 at Pensionpura distributed currency notes of Rs.100, 500/- and Rs.1,000/- to female voters with the object, directly or indirectly inducing them to vote him?	It is proved that he visited Pensionpura on 19.11.2013 and visited various houses from door to door, however, it was not proved that he distributed currency notes in denominations of Rs.100/-, 500/- and Rs.1,000/-, as such, there appears to be no question of inducing

		the voters to vote for him.
5.	Whether on 20.11.2013 with the consent of respondent No.1 at Padmashree Shankar Laxman Stadium,Mhow in public meeting the Chief Minister declared that a Metro Train would be provided from Mhow to Indore and also declared that poor persons would be provided patta of the land with the object, directly or indirectly inducing them to vote him?	It is proved that the then Noticee No.1 Shivraj Singh Chouhan delivered a speech on 20.11.2013 at stadium, however, such speech did not affect the election of respondent No.1 materially and it did not amount to a corrupt practice by the then Chief Minister.
6.	Whether on 20.11.2013 in the evening with the consent of respondent No.1 country liquor was distributed amongst the voters in Village Mein and Aada Pahad and also 209, Ambedkar Nagar, Mhow, Vidhan Sabha constituency with the object, directly or indirectly inducing them to vote him?	It was proved that large quantity of liquor was seized on 20.11.2013 by the Police at Badgonda Police Station, however, the distribution of liquor with a view to inducing the voters on eve of polling is not proved and also it was not proved that liquor was being taken or distributed with consent of respondent No.1. Though it was proved that Noticee No.2 was travelling in the same vehicle, it was not proved that he was taking the liquor for distribution amongst the voters and as such

		it was not proved that he committed any corrupt practice.
7.	Relief and costs ?	The petition is dismissed. The petitioner shall bear his own costs and the costs of respondent No.1 and Noticee Nos.1 and 2.

### **I.A. No.7192/2015**

**19.** Before proceeding to undertake detailed discussion on issues, first I would like to consider I.A. No.7192/2015 on which arguments were heard on 13.09.2017 and the application is to be decided along with the final order/judgment on this petition.

**20.** This application was filed by the petitioner under Section 340 of Cr.P.C. The application was disposed of by order dated 23.11.2015. After considering the application, this Court disposed of the application in following terms :-

**"23. After going through the averments made in the application and the reply to the application, I find that admittedly, there is a mistake in description of respondent No.1 and also respondent No.1 did not appear before the notary public to sign the register. Counsel for the petitioner further submits that signatures on the affidavit are also forged, as respondent was not available in the State of MP at the relevant time.**

**24. Looking to the allegations made in the application, it is apparent that brief enquiry is necessary as provided by section 195 of Cr.P.C., therefore, this application is disposed of with the direction that office should separate the application, reply thereof and the petition by placing photocopy of the same in the record and register a separate MCC for conduct of brief**

**enquiry. The original affidavit should be kept in a sealed envelope and placed in custody of Principal Registrar of this Court."**

**21.** The relevant facts which gave rise to the application were that respondent No.1 filed an affidavit in support of I.A. No.6923/2015 and 6924/2015 on 08.09.2015, and in the affidavit, status of respondent No.1 was described as Minister of State of Madhya Pradesh while fully knowing that on the date of deposition of affidavit, he was not a Minister of State of Madhya Pradesh, but was only a Member of Legislative Assembly. It is further submitted that as required by the High Court of MP Rules, 2008, the deponent respondent No.1 was required to appear before the notary public and sign the register maintained by him under the provision of Rules, however, some other person impersonating himself as respondent No.1 appeared before the notary public therefore, he has committed offence under section 200 of IPC.

**22.** In reply of the application, respondent No.1 submits that no case is made out for invocation of section 340 of Cr.P.C. According to him, describing himself as Minister of the State of Madhya Pradesh was a bonafide mistake and it could not be said to be false declaration as contemplated under Section 200 of IPC. On the basis of such minor mistakes, further proceeding under section 340 of Cr.P.C. was not warranted. He further submits that

the typist, who typed the affidavit mistakenly took description of earlier affidavit which was already available on computer. Unfortunately, respondent No.1 could not notice the mistake. Similarly, signature on the register of notary public was not part of the affidavit. Such register is maintained by notary for his own safety and it is not governed by the rules. The respondent No.1 did not sign the register and only the person, who identified him, signed the register of notary. The signature on the register is of the advocate, who identified the respondent. There is no provision in law which requires the deponent to personally sign the register of notary public and on such averment, he prays that application be dismissed.

**23.** The respondent went before the Hon'ble Apex Court and filed an SLP No.8232-8234/2016. The matter was disposed of by Hon'ble Apex Court by order dated 12.01.2017. The order passed by this Court was set aside and matter was remanded back. The Hon'ble Apex Court observed as under :-

**"4. Since, such a satisfaction is completely lacking in this case, the impugned order in I.A. No.7192 of 2015 in EP No.15/2014 has to be set aside and we do so. The matter is remanded to the High Court for fresh consideration in accordance with law.**

**5. We make it clear that we have not expressed any opinion on merits of the matter.**

**6. Accordingly, the appeals stand disposed of."**

**24.** Accordingly, now the application has to be reconsidered in light of directions issued by Hon'ble Apex Court. Section 340 of

Cr.P.C. provides as under :-

**"340. Procedure in cases mentioned in section 195.**

**(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub- section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-**

**(a) record a finding to that effect;**

**(b) make a complaint thereof in writing;**

**(c) send it to a Magistrate of the first class having jurisdiction;**

**(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non- bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and**

**(e) bind over any person to appear and give evidence before such Magistrate.**

**(2) The power conferred on a Court by sub- section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub- section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub- section (4) of section 195."**

**25.** It is apparent that Section has two limbs, the first limb is that if in opinion of the Court, an inquiry, in the nature of preliminary enquiry, was called for to ascertain whether any offence referred to in clause (b) of sub- section 1 of Section 195 had been committed, the Court may proceed to conduct the enquiry. The second limb is that after such preliminary enquiry, a finding may be recorded by the Court and then a complaint may be made in



writing and send it to a Magistrate of the First Class having jurisdiction.

**26.** It is apparent that the Hon'ble Apex Court set aside the preliminary enquiry, ordered by this Court and as such in light of observation made by the Hon'ble Apex Court, the preliminary enquiry is not possible as on the basis of material available on record, such preliminary enquiry was not called for.

**27.** As such, we have to see whether on the basis of averments made in the application and the reply filed thereof, any offence as described in clause (b) of sub-section 1 of Section 195 is appeared to have been committed. The offences described in the clause (b) of sub section 1 of Section 195 or Sections 193 to 196 (both inclusive), Sections 199 and S.200, 205 to 211 (both inclusive) and Section 228, when such offences are committed in or in relation to any proceeding in the Court. Clause 2 includes the sections 463, 471, 475, 476 of IPC and sub clause 3 includes any attempt or any conspiracy to commit such offences.

**28.** From the averments made in the application, it is apparent that it was alleged by the petitioner that respondent No.1 had described himself wrongly in the affidavit as he was not a Minister of the State at the relevant point of time, but only a member of Legislative Assembly. Second allegation is that he did not appear before the Notary Public and did not sign the register

maintained by him under the provisions of the law and some other person impersonating himself as respondent No.1 appeared before the Notary Public and, therefore, he committed an offence under Section 200 of IPC.

**29.** In reply, respondent No.1 said that describing himself as Minister of the State was a bonafide typographical error and there was no false declaration as contemplated by Section 200 of IPC. He also admitted that the person who identified him, signed the register of the Notary, the signature was of the Advocate, who identified the respondent. According to him, there was no provision in law who requires that the register should be signed by the deponent.

**30.** As such, there was no allegation by the petitioner that any content of the affidavit was false. Only allegation was that the false declaration was used as true while respondent No.1 was knowing that the declaration was false. Section 199 and 200 of IPC as under :-

**"199. False statement made in declaration which is by law receivable as evidence.—Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.**

**200. Using as true such declaration knowing it to be false.—Whoever corruptly uses or attempts to use as**

**true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence. Explanation .— A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of sections 199 to 200."**

**31.** From the allegations made in the application it is apparent that neither respondent No.1 nor any other person made any false declaration. The signature on the affidavit was stated to be false during course of arguments by the counsel for the petitioner, however, on the basis of material available on record, it cannot be said that the signature on the affidavit were false, and as such, after considering the material available on record, in considered opinion of this Court, prima-facie, no offence is made out to warrant any further action as required under Section 340 of Cr.P.C to be taken in this matter.

**32.** As such, the application deserves to be dismissed and is dismissed accordingly.

**33.** Apart from this application, an objection regarding non-compliance of provision of Section 83 of the RP Act has to be decided since commission of corrupt practice was alleged. In this case, respondent No.1 and both the noticee raised an objection regarding non-compliance of proviso appended to sub Section 1 of Section 83 of the Act.

Section 83(1) of the Act provides as under :-

**"83(1) An election petition—**

**(a) shall contain a concise statement of the material facts on which the petitioner relies;**

**(b) shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and**

**(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:**

**Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.”**

**34.** According to proviso appended to it when corrupt practice is alleged, a petition shall also be accompanied by an affidavit in prescribed form in support of the allegation of such corrupt practice and the particulars thereof. A form of affidavit is prescribed in Rule 94 A of Conduct of Elections Rules, 1961 ('Rules 1961' for short). Rule 94A of Rules 1961 provides as under :-

**"94.A Form of affidavit to be filed with election petition.—The affidavit referred to in the proviso to sub-section (1) of section 83 shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be in Form 25."**

**35.** Form 25 appended to the Rules has two portions. One relates to the paragraph where averments were made from personal knowledge of the petitioner and the second part relates to those paragraphs which pleadings are made on the basis of information received by the petitioner.

36. Learned counsel appearing on behalf of respondent No.1 and the noticees placed their reliance on judgment of Hon'ble Apex Court in case of **Gaganand Krishnaji Bapat vs. Datta Ji Raghobai Meghe; 1995 (5) SCC 347.** According to learned counsel appearing on behalf of Noticee No.1, in para 18 of the judgment, the Hon'ble Apex Court observed that an Election Petition leveling a charge of corrupt practice is required by law to be supported by an affidavit and the election petitioner is also obliged to disclose his source of information in respect of commission of the corrupt practice. These become necessary to bind the election petitioner to the charge leveled by him and prevent any fishing or roving inquiry and to prevent the return candidate from being taken by a surprise. Further he placed reliance on judgment of Hon'ble Apex Court in case of **R.P. Moidutty vs. P.T. Kunju Mohammad & another (2000) 1 SCC 481** in which quoting its own judgment in case of **F.A. Sapa etc. vs. Singora and others; (1991) 2 SCR 752,** the Hon'ble Apex Court observed that defect in verification is not fatal to the petition and it can be cured and finally the Apex Court observed,

**"In our opinion, unless the defect in verification was rectified, the petition could not have been tried. For want of affidavit in required form and also for lack of particulars, the allegations of corrupt practice could not have been enquired into and tried at all. In fact....."**

37. Learned counsel for the petitioner submits that as the

averments made in the petition were based on information received by the petitioner from various sources and no allegation was made from his own knowledge. As such, first part of Form 25 was totally omitted and only affidavit was given in second part. So far as the disclosing source of information is concerned, learned counsel for the petitioner submits that the affidavit was only a supporting document, the detailed averments were made in paragraph itself as per requirement of Section 83 of the Act and for each corrupt practice alleged source was mentioned in the petition itself and as such, it cannot be said that the petitioner did not comply with provisions of Section 83 of the Act.

**38.** I have taken rival contentions of both the counsels and according to considered opinion of this Court, the averments made in the petition and the affidavit should be read together and cannot be read in isolation, each and every paragraphs should be read alongwith affidavit and the affidavit should specify whether such averments were made from personal knowledge or from information received by the petitioner, if such requirement is complied with, there is no statutory requirement of Section 83 or Rule 94A that the source should also be disclosed in the affidavit as well, and as such, in my considered opinion, so far as the present case is concerned, there appears to be full compliance of provisions of Section 83 of the Act and no deficiency can be

found in the affidavit filed in support of the petition. As such, the objection being devoid of any force is rejected.

39. Now, we may proceed to undertake detailed discussion on every individual issue.

### **Issue No.3**

40. Pleadings of the petitioner for this issue in paragraph Nos.20, 21 and 22, the averments made in these paragraphs are reproduced below :-

**“20. That, in the year 2013, Muharram was on 14<sup>th</sup> November. The respondent No.1 participated in a function organized at Market Chowk, Mhow between 11.00 p.m. to 12.00 mid night. In such Moharrum function, there was a huge crowd. As stated above, the respondent No.1 participated in such function. He distributed medals and trophies by way of rewards to various persons in such function. The distribution of medals and trophies by way of rewards amount to a gratification to directly induce and influence a voter to vote for him at an election. The gratification given by the respondent No.1 to a voter to induce him to vote for him (respondent No.1) at an election amounts to a 'corrupt practice' as defined under Section 123 of the Representation of People Act, 1951 (hereinafter referred to as the Act).**

**21. That, Shri Mahesh Jaiswal, President of “Mhow City Congress Committee” had made a complaint to Shri M.M. Nagulli, Observer, Election Commission of India of the said Constituency about the corrupt practice which the respondent no.1 had committed on 14.11.2013 during the Moharrum function. A copy of such complaint dated 15.11.2013 is filed herewith an marked as Annexure P/13. In this complaint the other illegalities which were committed by the respondent No.1 and his party men were also mentioned.**

**22. That, the incident of giving medals and trophies during Moharrum function in the night of 14.11.2013 was also highlighted in daily newspaper**

**“Patrika” dated 16.11.2013 published from Indore. In the headlines of such newspaper, it is specifically mentioned that the respondent no.1 distributed medals and trophies. A copy of such paper clipping is enclosed herewith as Annexure P/14. Mohd. Yusuf, s/o Mohd. Hanif who is a voter of said Constituency was also present during Moharrum function which was held on 14.11.2013 at Market Chowk, Mhow during 11.00 p.m. to 12.00 mid night. He witnessed giving of rewards by way of medals and trophies to various persons in the said function.”**

**41.** Reply to these paras is in para Nos. 7 and 8 of Return filed on behalf of respondent No.1, which is as under :-

**“7. Reply to para 20 :- While the answering respondent's participation in the Muharram function at Market Chowk, Dr. Ambedkar Nagar/Mhow and the distribution by him of medals/trophies at the said function to some of the participants are facts which are not denied, it is submitted that the distribution by him of medals/trophies as aforesaid at the said function did not amount to giving of any gratification much less any illegal gratification to the voters with a view to induce them to vote for him (i.e. answering respondent). In any case the aforesaid distribution of medals/trophies cannot be said to be a “corrupt practice” under the RP Act. It may also be stated that the medals/trophies were distributed by the answering respondent in the capacity of a guest at the said function. Infact, asking a guest to distribute the medals/trophies is a way in which the organizers honour their guest/guests.**

**8. Reply to para 21 and 22 :- Since the answering respondent is not aware of any complaint allegedly made by one Shri Mahesh Jaiswal, (who was is alleged to be the then President of the Dr. Ambedkar Nagar/Mhow City Congress Committee) to the Election Commission of India, the said allegation is denied and the petitioner is put to strict proof of the same. However, without prejudice to the above submissions, it is submitted that the alleged complaint made by Mr. Mahesh Jaiswal is of no relevance or significance, particularly because no cognizance was taken of same by the Election Commission of India. Similarly, the**



**allegations which have been made by the petitioner on the basis of the media reports are also baseless, unfounded irrelevant and inadmissible in evidence, This is more so as the said media reports are noting but the reporters' version of the alleged incident. Besides, no reliance can be placed on any report published in the newspaper "Patrika" because of the prejudice of the said newspaper against the answering respondent. Further, the presence of the alleged voter Shri Mohd. Yusuf at the alleged incident also does not add to the petitioner's case. Infact, the alleged presence of Shri Mohd. Yusuf amounts to creating evidence in the case and has nothing to do with the pleadings in the case."**

42. To prove the averments made in the petition, the petitioner Antar Singh Darbar (P.W.-1) examined himself. In para 8 of his statement, he stated that respondent No.1- Kailash Vijaywargiya, who was a Cabinet Minister in those days, filed his nomination papers on 08.11.2013. On 14.11.2013 at about 11:00 to 12:00 in the night, a procession was taken out in Market Chowk, Mhow in which respondent No.1 distributed trophies and medals to voters. The procession was taken out in connection with festival of Muharram, which was being observed by Muslim community of the area. A complaint was lodged by Mahesh Jaiswal (P.W.-4). His complaint is **Ex.P/12**. The news was also published in newspaper "Patrika" in its edition dated 16.11.2013. Copy of the same is produced, which is **Ex.P/13**. Mohd. Yusuf (P.W.-3) is also examined on this issue. In para 1 of his statement, he stated that he was a resident of Mhow. He knows the petitioner Antar Singh Darbar as well as respondent No.1 Kailash Vijaywargiya. He

stated that he remembered some of the important events of the election that was held in the year 2013. He stated that on 14.11.2013, the festival of Muharram was being observed. At about 10:00 to 10:30 p.m., muslim community started taking out "Akhadas". According to this witness, he went there to witness the event. He saw that between 11:00 to 12:00 p.m., respondent No.1 was distributing trophies and medals to different persons. At that point of time, he was standing 5 to 6 feet away from the stage, from where respondent No.1 was distributing the trophies. Respondent No.1 was also telling various persons that they should vote for him. He informed about the incident next day in the morning to the petitioner Antar Singh Darbar and Mahes Jaiswal. Mahesh Jaiswal (P.W.-4) is another witness. In para 1, he stated that he was a City President of Congress Party during the election of Legislative Assembly held in the year 2013. On 15.11.2013 at about 9:00 a.m., candidate of Indian National Congress, the petitioner Antar Singh Darbar was scheduled to go to a mass contact. For this purpose, he was going towards his party office. In front of a shop of sweets, 4 - 5 persons were standing. Mohd. Yusuf (P.W.-3) was also there. He informed him that between 11:00 - 12:00 in the preceding night, on 14.11.2013, respondent No.1 distributed medals and trophies at Market Chowk, Mhow. On that day, the Muslim community of the area

was observing festival of Muharram and was taking out Akhadas. According to this witness, when he came to know about the incident, he went to Office of Election Commission and lodged a report which is **Ex.P/12**. He also signed the complaint. Tapish Pandey (P.W.-12) deposed that he was posted as Tehsildar and Assistant Returning Officer, Mhow, Distt.- Indore. As an Assistant Returning Officer, he used to assist the Returning Officer and apart from that, he was following the instructions issued by senior officers. Though he stated that he was not aware of any incident that took place on 14.11.2013 when festival of Muharram was being observed, he admitted that he issued a permission which is **Ex.P/36** regarding photography of the events, he said that he was not aware whether any photography was done. He also admitted that he issued permission of taking out procession during the festival of Muharram which is **Ex.P/39**.

**43.** The petitioner also examined Kunal Kishore (P.W.-14) on this point. In para 2 of his statement, the witness deposed that there were many incidences that took place during the election period, which fell in the category of violation of Model Code of Conduct. This witness was working for newspaper "Patrika" which was published by Rajasthan Patrika Pvt. Ltd. He was posted at Indore from the year 2008.

**44.** He further deposed that on 14.11.2013, the Muslim

community of the area was observing festival of Muharram. In accordance with custom, in the evening, a procession of Akhadas was taken out. Many members of the community took part in the sports events that were arranged by the community during the festival and the winners were to be honored and for this purpose, stage was erected at Market Chowk, Mhow. Late, in the night, the organizers of the event started honoring the winners. Respondent No.1 reached there and he, to honour the participants, distributed medals and trophies and also appealed them to vote for him. In para 6 of his statement, he stated that this event took place in the intervening night of 14/15.11.2013, which was published in the edition that was released on 16.11.2013, as by the time, the news item reached office of the newspaper, the edition to be circulated on 15.11.2016, was already released. **Ex.P/13** is the copy of the news item published in the newspaper dated 16.11.2013. He sent the news item to his office for publication. On this point, the next witness is Sharad Mahajan (P.W.-18). This witness was posted as Deputy Commissioner in the M.P. Housing Board. His services were requisitioned during the election and he was a member of flying squad for Mhow Constituency. It was his duty to cover all those incidences where violation of model code of conduct was alleged and reported to the officers, responsible for conducting the election and submit a report to Election Officer

whether there was any violation of Model Code of Conduct. During the elections, he received in all 12 complaints. He submitted report in respect of every event to the Returning Officer. When they received a complaint, they went to the spot along with a police party and if there was any violation of Model Code of Conduct, the police party immediately took action against them. He submitted report on 17.11.2013, which is **Ex.P/44**. On 14.11.2013 at about 8:00 - 9:00 p.m. they reached near Mosque, which was located on the outskirts of Mhow City. There, a programme was going on. A Sub-Engineer whose name was Avasthi and A.S.I. whose name was Goyal were also with him. Respondent No.1 was also passing from there. The organizers of the programme requested him and invited him to attend the programme, which was accepted by respondent No.1. Respondent No.1 did not deliver any speech from the stage, but distributed bunch of flowers and medals. Some people also garlanded him. According to this witness, he enquired from the organizers and they informed him that they obtained permission from the concerning Police Station. He also saw the video of the event, which was sought by the other flying squad and after seeing contents of the videograph, he submitted his report.

**45.** On this issue, respondent No.1 examined himself as R.W.-1. He stated that on 14.11.2013, a procession of Muharram was

passing through Market Chowk, Mhow at about 10:30 – 11:00 p.m.. After finishing his canvassing for the day, he was passing through the Market Chowk, Mhow. The organizers stopped him. There was no stage erected by Bhartiya Janta Party. He did not address from the stage to the persons present there, neither he appealed to anybody to vote for him. The organizers requested him to distribute medals and trophies, which were with the organizers. He did not bring anything with him. The trophies supplied by the organizers were distributed by him. Shahid Qureshi (P.W.-7) is also examined. This witness was a member of Muslim community and he attended the procession took out to observe festival of Muharram. He said that he did not remember the exact date, but at that time canvassing for Legislative Assembly Election was going on. A stage was erected by him and medals and trophies were brought by them being organizers of the event. Trophies and medals were distributed to various workers, who were identified to be honoured. Such distribution was normally done by senior members of the community or any guest who was invited by the community. In para 2 of his statement, he said that when the programme was going on, respondent No.1 was passing from the area. He was invited by the organizers to distribute the medals and trophies. No public meeting was held and respondent No.1 did not address anybody from the stage

neither he appealed anybody to vote for him. Mushtaque (R.W.-8), Mohd. Ayub Qureshi (R.W.-10), Mohd. Amir (R.W.-11), Mohd. Azam (R.W.-12) and Mohd. Salim (R.W.-13), all supported the statement given by Shahid Qureshi (R.W.-7). Their statements in cross-examination shall be considered while appreciating their statements in following paragraphs.

**46.** Manoj Ojha (C.W.-3) is a court witness. He videographed the events held on the occasion of Muharram on 14.11.2013. According to him, he was posted as a constable in Police Station, Mhow and he videographed the event and deposited the CD in the Police Station. He was shown the contents of video prepared by him. Anil Ahirwar (C.W.-4) is also a court witness. He issued the certificate under Section 65-B of Evidence Act, which is **Ex.C/11**. His affidavit is **Ex.C/12**. Apart from these documents Article B is the soft copy of the photographs published in the newspaper sought by Kunal Kishore (P.W.-14) and Article F is the CD of Muharram sought by Manoj Ojha (C.W.-3).

**47.** This is the evidence produced by both the sides which we have to appreciate to draw an inference on this point.

**48.** It is apparent that respondent No.1 admitted in para 7 of his reply that he distributed medals and trophies at a function organized in connection with festival of Muharram by Muslim community at Market Chowk, Mhow.

49. In this regard, learned counsel for the petitioner argues that in accordance with Order 8 Rule 5(1) of CPC provides as under :-

**"5. Specific denial- (1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:**

**Provided that Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.**

(2).....

(3).....

(4)....."

50. As such, the proviso appended to the Rule clearly mentioned that the Court has discretion and can require any fact so admitted to be proved otherwise than by such admission.

51. So far as standards of proof in election petitions is concerned, learned counsel for the respondent places reliance on judgment of Hon'ble Apex Court in case of **Qamarul Islam vs. S.K. Kanta** reported at **(1994) SUPP. (3) SCC 5** and **Pradip Buragohain vs. Pranati Phukan** reported at **(2010) 11 SCC 108**.

In these cases, it was held by Hon'ble Apex Court that in election petitions standard of proof is not on the basis of preponderance of probability, but the proof should be beyond reasonable doubt as in criminal cases, and as such, proviso appended to Rule 5 of Order 8 of CPC comes into play and in election petitions, the burden is



on the petitioner to prove every fact pleaded beyond reasonable doubt, unless specifically admitted. On this aspect, the learned counsel for the petitioner places reliance on judgments of Hon'ble Apex Court in cases of **Badat & Co. Bombay vs. East India Trading Co.**; **AIR 1964 SC 538**, **Sushil Kumar vs. Rakesh Kumar**; **2003(8) SCC 673** and **Standard Chartered Bank vs. Andhra Bank Financial Service Ltd.**; **(2016) 1 SCC 2007** and judgment of this Court in **Samrathmal vs. Union of India**; **AIR 1959 MP 305** and **Smt. Dhanbai vs. State of M.P.**; **AIR 1979 MP 17**.

52. Para 11 of **Badat and Co. Bombay (supra)** is important and can be quoted here :-

"11. Order 7 of the Code of Civil Procedure prescribes, among others, that the plaintiff shall give in the plaint the facts constituting the cause of action and when it arose, and the facts showing the court has jurisdiction. The object is to enable the defendant to ascertain from the plaint the necessary facts so that he may admit or deny them. Order VIII provides for the filing of a written- statement, the particulars to be contained therein and the manner of doing so; rules 3, 4 and 5 thereof are relevant to the present enquiry and they read :

Order 8 Rule 3. It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

Rule 4. Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he

**must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.**

**Rule 5. Every allegation of fact in the plaint, if not denied specifically, or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability.**

**Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission".**

**These three rules form an integrated code dealing with the manner in which allegations of fact in the plaint should be traversed and the legal consequences flowing from its non-compliance. The written-statement must deal specifically with each allegation of fact in the plaint and when a defendant denies any such fact, he must not do so evasively, but answer the point of substance. If his denial of a fact is not specific but evasive, the said fact shall be taken to be admitted. In such an event, the admission itself being proof, no other proof is necessary. The first paragraph of r. 5 is a re-production of O.XIX, r. 13, of the English rules made under the Judicature Acts. But in mofussil Courts in India, where pleadings were not precisely drawn, it was found in practice that if they were strictly construed in terms of the said provisions, grave injustice would be done to parties with genuine claims. To do 'Justice between those parties, for which Courts are intended, the rigor of r. 5 has been modified by the introduction of the proviso thereto. Under that proviso the Court may, in its discretion, require any fact so admitted to be proved otherwise than by such admission. In the matter of mofussil pleadings, Courts, presumably relying upon the said proviso, tolerated more laxity in the pleadings in the interest of justice. But on the Original Side of the Bombay High Court, we are told, the pleadings are drafted by trained lawyers bestowing serious thought and with precision. In construing such pleadings the proviso can be invoked only in exceptional circumstances to prevent obvious injustice to a party or to relieve him from the results of an accidental slip or omission, but not to help a party who designedly made**

vague denials and thereafter sought to rely upon them for non-suiting the plaintiff. The discretion under the proviso must be exercised by a Court having regard to the Justice of a cause with particular reference to the nature of the parties, the standard of drafting obtaining in a locality, and the traditions and conventions of a Court wherein such pleadings are filed. In this context the decision in *Tildestey v. Harper*(1) will be useful. There, in an action against a lessee to set aside the lease granted under a power the statement of claim stated that the donee of the power had received from the lessee a certain sum as a bribe, and stated the circumstances; the statement of defence denied that sum had been given, and denied each circumstance, but contained no general denial of a bribe having been given. The Court held, under rules corresponding to the aforesaid rules of the Code of Civil Procedure, that the giving of the bribe was not sufficiently denied and therefore it must be deemed to have been admitted. Fry J. posed the question thus : What is the point of substance in the allegations in the statement of claim ? and answered it as follows :

"The point of substance is undoubtedly that a bribe was given by Anderson to Tildesley, and that point of substance is nowhere met ..... no fair and substantial answer is, in my opinion, given to the allegation of substance, namely that there was a bribe. In my opinion it is of the highest importance that this rule of pleading should be adhered to strictly, and that the Court should require the Defendant, when putting in his statement of defence, and the Plaintiff, when replying to the allegations of the Defendant, to state the point of substance, and not to give formal denials of the allegations contained in the previous pleadings without stating the circumstances. As far as I am concerned, I mean to give the fullest effect to that rule. I am convinced that it is one of the highest benefit to suitors in the Court."

It is true that in England the concerned rule is inflexible and that there is no proviso to it as is found in the Code of Civil Procedure. But there is no reason why in Bombay on the original side of the High Court the same precision in pleadings shall not be insisted upon except in exceptional circumstances. The Bombay High

**Court, in Laxminarayanan v. Chinniram Girdhai Lal(1), construed the said provisions and applied them to the pleadings in a suit filed in the court of the joint Subordinate Judge of Ahmednagar. There the plaintiffs sued to recover a sum of money on an account stated. For the purpose of saving limitation they relied in their plaint upon a letter sent by the defendant-firm. The defendants in their written statement stated that the plaintiffs's suit was not in time and that "the suit is not saved by the letter put in from the bar of limitation". The question was raised whether in that state of pleadings, the letter could be taken as admitted between the parties and, therefore, unnecessary to be proved. Batchelor, Ag. C.J., after noticing the said provisions, observed:**

**"It appears to us that on a fair reading of paragraph 6, its meaning is that though the letter put in by the plaintiff is not denied the defendants contend that for one reason or another its effect is not to save the suit from the bar of limitation. We think, therefore, that..... the letter, Exhibit 33, must be accepted as admitted between the parties, and therefore, unnecessary to be proved."**

**The written statement before the High Court in that case was one filed in a court in the mofussil ; yet, the Bombay High Court implied the rule and held that the letter need not be proved aliunde as it must be deemed to have been admitted in spite of the vague denial in the written statement. 1. therefore, hold that the pleadings on the original side of the Bombay High Court should also be strictly construed, having regard to the provisions of Rules 3, 4 and 5 of Order 8 of the Code of Civil Procedure, unless there are circumstances wherein a Court thinks fit to exercise its discretion under the proviso to Rule 5 of Order 8."**

**53.** In light of observation made by the Hon'ble Apex Court going through the pleadings of the petitioner and the respondent, it is apparent that fact of distribution of medals and trophies on 14.11.2014 on the occasion of festival of Muharram was

admitted. Now, the following aspects have to be considered to determine whether respondent No.1 indulged in any kind of corrupt practice, as specified in Section 123 of RP Act.

(i) Whether respondent No.1 was a formally invited guest in the function.

(ii) Whether the stage was erected by supporters of respondent No.1 on behalf of respondent No.1, giving it a colour, that it was erected by organizers of Akhada on the occasion of festival of Muharram, which was a routine religious practice amongst the members of Muslim community.

(iii) Whether the medals and trophies distributed on that occasion was procured by respondent No.1 and due to the fact that model code of conduct was in force during the period of election, it was shown that such medals and trophies were brought by organizers of the function and merely distributed by respondent No.1, who per chance, was passing from Market Chown, Mhow.

(iv) Whether such distribution of medals and trophies amount to gratification under Section 123 of the Act.

**54.** Petitioner- Antar Singh Darbar was examined as P.W.-1, whose relevant portion in examination-in-chief has already been quoted above. In para 19 of his cross examination, he admitted

that he did not witness the function himself and he was informed about the incident by Mohd. Yusuf (P.W.-3). In para 20, he stated that Mahesh Jaiswal (P.W.-4) filed a written complaint on his behalf before election observer, however, no action was taken, and therefore, this petition was filed.

**55.** Mohd. Yusuf is the person who witnessed the incident himself and informed about the function to the petitioner. In his cross examination in para 2, he said that when he saw the respondent No.1 distributing the medals and trophies, the medals and trophies were with him, but he did not know, whether the medals and trophies were brought by respondent No.1. He admitted that he did not file any complaint regarding this function to any office.

**56.** Mahesh Jaiswal is the person, who lodged the complaint, in para 3 of his cross examination, he said that he filed the complaint when he was informed by Mohd. Yusuf. The complaint is **Ex.P-**

**12.** In **Ex.P-12** the complaint was made in following words :-

“भाजपा प्रत्याशी कैलाश विजयवर्गीय द्वारा मुस्लिम समाज के धार्मिक त्यौहार मोहरम पर दिनांक की रात्रि 11:54 बजे बाजार क्षेत्र में मंच लगाकर चुनावी प्रचार किया (जिसकी रिकार्डिंग स्थानीय पुलिस प्रशासन क्षेत्रीय निर्वाचन अयोग द्वारा की गई है।) जो कि चुनाव आचार संहिता का खुला उल्लंघन होकर धार्मिक भावनाओं के साथ खिलवाड है।”

**57.** In this part of the complaint, it was mentioned that on 14.11.2013 at about 11:54 in the night, respondent No.1 set up a stage in the market area and he was conducting his election campaign from the stage. Such conduct on part of respondent

No.1 is a violation of Model Code of Conduct and he also played with religious sentiments/beliefs of the electors.

**58.** In this para, there was no mention of distribution of medals and trophies and this part was shown to this witness in para 3 of his cross examination and he admitted that there was no mention of distribution of medals and trophies.

**59.** Kunal Kishore (P.W.-14) was Senior Sub Editor in the newspaper 'Patrika'. According to him, during elections of Vidhansabha held in the year 2013, he was posted at Mhow. In para 16, he said that during festival of Muharrma at various places, stages were erected. Who erected the stages was not known to him. In his opinion, it must be the organizers, who erected the stages. He further said that no public meeting was held, only a procession was taken out, at the time of incident, when the respondent was distributing the medals, procession was already over and participants were being honored. He was shown the CD, Article-B, in which file bearing name MH15NOV06. He said that respondent No.1 was apparently distributing the medals and trophies. In para 18, he expressed his opinion that the distribution of medals and trophies, according to him, was a violation of modal code of conduct.

**60.** Tapish Pandey (P.W.-12) is Tehsildar and Assistant Returning Officer. He was posted at Mhow during the elections of

2013. He issued a permission **Ex.P-36** and he admitted his signature over the documents. In para 6 of his statement, he answered the question in respect of the permission granted by him, but noting important had come in this part of his statement.

**61.** Sharad Mahajan (P.W.-18) is an Officer of M.P. Housing Board and he was posted as Deputy Housing Commissioner. At the time of election, his services were requisitioned for flying squad. According to him, when the flying squad received any intimation about violation of Code of Conduct, immediately reached on the spot and covered the incident. During the election of 2013, he received about 12 complaints. He prepared the report **Ex.P-44**. According to this witness, respondent No.1 was passing from the area, the organizers requested him to attend the function, on this, respondent No.1 attended the function. He did not address public from the stage and distributed medals to participants of Akhada. He also garlanded them and gave them bunch of flowers. This witness was allowed to be cross examined by the counsel for the petitioner. In his cross examination also no important new fact came on record.

**62.** **Ex.P-44** is the report prepared by this witness. The relevant portion of his report is reproduced below :-

“5.भाजपा प्रत्याशी कैलाश विजयवर्गीय द्वारा मोहरम पर दिनांक 14.11.13 की रात्रि में मेडल एवं सिल्ड बाटने संबंधित विडियोग्राफी की सी डी का अवलोकन किया गया जिसमें श्री कैलाश विजयवर्गीय द्वारा आठ मेडल हाथों से अखाड़ों में कर्तब दिखाने वाले व्यक्तियों को पहनाये गये तथा दो ट्राफी बांटी गई जिसमें एक ट्राफी पर मेडल भी लगा हुआ था इस प्रकार कुल 9 मेडल एवं दो ट्राफी वितरित की गई है तथा 6



व्यक्तियों को फूल की माला पहनाई गई है। सीडी के अनुसार इनके द्वारा मंच पर किसी प्रकार का कोई भाषण नहीं दिया गया है तथा इनके द्वारा मतदाओं को प्रभावित करने के संबंध में कोई मतयाचना मंच से नहीं की गई है। उक्त शिकायत के संबंध में मेरे द्वारा आयोजनकर्ता शाहिद कुरेशी पिता अब्दुल रसीद कुरेशी 28 साल निवासी 1684 टाल मोहल्ला महु 9981877272 तथा मंच पर उपस्थित मुस्ताक राईन पिता अब्दुल वहीद मुसलमान 27 साल निवासी 1738 टाल मोहल्ला महु 9977530252 अब्दुल हदी पिता अब्दुल रसीद जाति मुसलमान 24 साल निवासी 1716 टाल मोहल्ला महु 8602710775 मोहम्मद आमीर पिता मोहम्मद शब्बीर जाति मुसलमान 32 साल निवासी 1686 टाल मोहल्ला महु 9926019626 मोहम्मद आजम पिता मोहम्मद इलयास जाति मुसलमान 31 साल निवासी गार्डन नम्बर 107 गोकुलगंज महु 8120506888 के कथन लिये गये है, जिन्होंने बताया कि हमारे द्वारा धार्मिक रिती रिवाज अनुसार प्रतिवर्ष यह कार्यक्रम आयोजित किया जाता है इस साल भी यह कार्यक्रम आयोजित किया गया था जिसमें ट्राफी, मेडल व फूल माला की व्यवस्था हमारे द्वारा की गई थी तथा हमारा सामाजिक कार्यक्रम चल रहा था उसी समय भाजपा प्रत्याशी कैलाश विजयवर्गीय निकल रहे थे, जिन्हें हमारे द्वारा आग्रह करने पर मंच पर उपस्थित हुये थे। मंच पर भाजपा प्रत्याशी कैलाश विजयवर्गीय के द्वारा ट्राफी तथा मेडल का वितरण किया गया है तथा वितरण के दौरान कैलाश विजयवर्गीय के द्वारा मंच पर किसी प्रकार का कोई भाषण नहीं दिया गया है तथा इनके द्वारा मतदाओं को प्रभावित करने के संबंध में कोई मतयाचना मंच से नहीं की गई है। मात्र इनके द्वारा हमारे पारंपरिक त्यौहार के दौरान पारंपरिक रूप से वितरित होने वाली ट्राफी तथा मेडल का वितरण किया जाकर अखाडों के खलीफा उस्तादों का माला पहनाकर स्वागत सम्मान किया गया था। आयोजक द्वारा उक्त मंच लगाने की अनुमति थाना महु से दिनांक 13.11.13 को विधिवत ली गई थी। जिसकी प्रति संलग्न है।"

63. In response, respondent No.1 has examined himself and apart from this, R.W.-7 to 13 were examined and these witnesses were the organizers of the function in which respondent No.1 distributed the medals and trophies. Statements of these witnesses were assailed by the counsel for the respondent on the ground that they were close associates of respondent No.1. In para 6 of statement of Shahid Qureshi (R.W.-7), he stated that he was associated with Akash Vijaywargiya Fans Club which was a group managed by Akash Vijaywargiya son of respondent No.1. Apart from that he stated that R.W.-8 to 13 were all members of this club. However, merely because they were closely associated

with respondent No.1 and interested witnesses, their statements could not be discarded solely on this reason, and therefore, the burden was on the petitioner to prove that the stage was erected at the behest of respondent No.1 under the garb of festival of Muharram. However, going through the statements of all these witnesses, nowhere it was admitted or even indicated that the stage was erected on the directions and instructions of respondent No.1. On the contrary, the independent witness Kunal Kishore, who was a journalist said that such stages were erected during the festival of Muharram and that was a normal religious practice, and therefore, the statement of this witness cannot be disbelieved. Apart from this, there is no evidence produced by the petitioner to show that respondent No.1 erected the stage or he borne the expenses of the stage.

**64.** Similarly, there is no evidence to show that the medals and trophies were purchased by him. All the witnesses, who were organizers stated that they provided the medals and trophies, which were distributed to the winners of participants of Akhada.

**65.** The CD, Article B, is produced, admissibility of which is challenged by respondent No.1. Admissibility of this CD which is an electronic record under Section 65-B of Evidence Act shall be dealt in the later part of this judgment, however, it was admitted by Kunal Kishore that respondent No.1 was seen in one of the

files in the CD, as distributing medals and trophies. A similar report was submitted by Sharad Mahajan, who also saw the CD of the function and it was mentioned by him that respondent No.1 distributed medals and trophies.

**66.** Accordingly, since this fact was also admitted by respondent No.1, it is proved that he distributed medals and trophies, however, it was not proved that the medals and trophies were purchased by him from his own pocket and it was also not proved that the stage was erected by the organizers to facilitate him to conduct his election propoganda from the stage.

**67.** It was further alleged that in one of the files, he was seen whispering in ear of some of the participants and it was said that he was asking them to vote for him.

**68.** Learned counsel for the respondent argues that there was a lot of noise and it could not be heard as to what he was saying to them, however, even if it is assumed that he was asking them to vote for him, it was not even a violation of model code of conduct, as the code of conduct does not prohibit one to one canvassing after 11.00 p.m. It only prohibits active propoganda like holding public meetings and using public address system by the candidates.

**69.** The case of respondent No.1 was that he was going back after finishing his election propoganda for the day, when he was

invited by the organizers to distribute the medals, as he was a known person in the area and it was an honor for them to invite him. According to material available on record, it was not proved that he was a formal guest in the function, no invitation card was produced and as held earlier, such distribution of medals and trophies from the stage was a routine religious practice every year, and therefore, it cannot be held that his attending function and distributing medals and trophies was a pre-arranged exercise by the organizers of the festival.

**70.** The last aspect of the matter is whether the distribution of medals and trophies amount to gratification. Learned counsel for the petitioner places reliance on judgment of Hon'ble Apex Court in case of **Mahmoodkhan Mahboobkhan Pathan vs. State of Maharashtra** in which the Hon'ble Apex Court defined the word "gratification" which was not defined in Prevention of Corruption Act and as held by Hon'ble Apex Court it must be understood in its literal meaning. In "*Oxford Advance Learners' Current English Dictionary*", the word "gratification" is shown to have the meaning "to give pleasure or satisfaction to".

**71.** In the present case, medals were distributed to the winners of the games held by Akhadas participants held on the occasion of festival of Muharram. They won their position and they were to get medals and trophies even otherwise. It was not that the medals

and trophies were distributed to such incompetent persons, who did not deserve them and such distribution was made only with a view to pursuing them to vote in favour of respondent No.1. As such, it is not proved that distribution by respondent No.1 amounted to gratification.

72. This brought us to the question of admissibility of CD, Article-F. How CD, Article-F, was produced before the Court had a factual background which must be taken into consideration. The petitioner informed the Court that in spite of his repeated applications under Right to Information Act, and even after filing an appeal before the State Information Commission, he was not supplied with the CD which was seen by Sharad Mahajan (P.W.-18) as a member of flying squad. After considering an application filed on behalf of the petitioner and after hearing both the parties, this Court directed the Election Commission to conduct an inquiry in respect of non-supply of CD to the petitioner. In order dated 09.08.2016, the Court framed questions to be enquired into by the Election Commission and submission of its report thereon. The Election Commission, in its turn, appointed the Revenue Commissioner, Indore, Shri Sanjay Dubey, as the Inquiry Officer, who enquired into the matter and submitted his report before the Court. Along with the report a CD was also furnished to the Court as **Annexure-9**. It was mentioned in the report that this CD was

prepared by Shri Dinesh Chouhan, who was the then Station House Officer of Police Station, Mhow. The CD was subsequently attempted to be exhibited in evidence.

73. An objection was raised by the respondent in respect of competency of the person to issue a certificate under Section 65-B of Evidence Act. By a detailed order dated 27.03.2017, this Court disposed of the objection taking into consideration peculiar circumstances under which the CD was filed before the Court and disposed of an application i.e. I.A. No.1340/2017 filed by Shri Dinesh Chouhan, the then Station House officer of Police Station Mhow, District Indore. The relevant portion of the order is reproduced below:-

**"I.A.No.1340/2017 is filed by Shri Dinesh Singh Chouhan, the then SHO, Police Station Mhow, district Indore. Presently, he is posted as SHO, Police Station Kotwali, district Dhar.**

**In the application it is stated that the CD which was submitted to the Commissioner during the enquiry which the Commissioner was conducting under the orders of this Court was got prepared by Constable Shri Anil Ahirwar from the shop of Mohammad Ansar who has expired meanwhile. The shop is located at Mhow in the name of Galaxy Computers. When this Court ordered to identify the shop from where the CD was prepared, Constable Shri Anil Ahirwar went to the shop and then he came to know the factum of death of Mohammad Ansar. Constable Shri Anil Ahirwar also submitted an affidavit on 21.02.2017 in this respect stating the same facts on oath.**

**Now the question arises as to who will be the proper person in such a situation to issue a certificate under Section 65-B of the Act. Section 65-B provides for admissibility of electronic records. Sub section (2) of**

**Section 65-B of the Act and in respect of the Certificate Sub section (4) of Section 65-B of the Act provides as under:-**

**“(2) The conditions referred to in the Sub-section (1) in respect to the computer output shall be the following, namely:-**

**(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of computer;**

**(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;**

**(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and**

**(d) The information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.**

**(3) .....**

**(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,**

**(a) identifying the electronic record containing the statement and describing the manner in which it was produced;**

**(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of**

showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.”

In the case of *Anvar P.V. Vs. P.K.Basheer* (2014) 10 SCC 473, the Hon'ble Apex Court as laid down that if a certificate issued in accordance with the provisions of Section 65-B of the Act, no electronic record/electronic output can be admitted in evidence. In para 24 of the judgment Hon'ble Apex Court laid down the following exceptions:-

“24. The situation would have been different had the appellant adduced primary evidence, by making available in evidence, the CDs used for announcement and songs. Had those CDs used for objectionable songs or announcements been duly got seized through the police or Election Commission and had the same been used as primary evidence, the High Court could have played the same in court to see whether the allegations were true. That is not the situation in this case. The speeches, songs and announcements were recorded using other instruments and by feeding them into a computer, CDs were made therefrom which were produced in court, without due certification. Those CDs cannot be admitted in evidence since the mandatory requirements of Section 65B of the Evidence Act are not satisfied. It is clarified that notwithstanding what we have stated herein in the preceding paragraphs on the secondary evidence on



**electronic record with reference to Section 59, 65A and 65B of the Evidence Act, if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence, without compliance with the conditions in Section 65B of the Evidence Act.”**

**The law laid down in the case of Anvar P.V.(Supra) is also reiterated by Hon'ble Apex Court in the case of Harpal Singh @ Chhota Vs. State of Punjab (2017) 1 SCC 734.**

**This Court while disposing of I.A.No.6036/2016 vide order dated 09.08.2016 issued the following directions:-**

**“Thus, the application [I.A. No.6036/2016] is allowed. Therefore, Commissioner, Madhya Pradesh State Election Commission, Bhopal himself or by any officer not below the rank of District Election Officer but not the District Election Officer, Indore be directed to make the inquiry and submit its report within a month from the receipt of copy of this order along with the annexures on following points.**

**(i) Why after direction of the Appellate Authority under Right to Information Act, 2005, CD has not been supplied to the petitioner ?**

**(ii) Why the CD has not been produced in the Election Petition ?**

**(iii) If the CD is destroyed, so what action has been taken against the erring officers ?**

**[8] Office is directed to immediately send the photo copy of this order; application [I.A. No.6036/2016] along with the annexures and affidavit filed by Mr. Santosh Taigore and his deposition by a registered letter to the Commissioner, Madhya Pradesh State Election Commission, Election Building, 58 Arera Hills, Bhopal”.**

**In compliance of this order the Commissioner submitted his report by letter dated 27.09.2016 which was taken note of by the Court on 21.10.2016. With this report a CD was also attached. It is stated that the CD contains the videography made by Police Station**

**Mhow, during Vidhan Sabha Elections held in 2013. The CD was prepared by an official camera which used CD of small size. 22 such CDs are available in the record of concerning Police Station alongwith the Camera. When in the enquiry, the CD was sought by the Commissioner as stated above, Constable Shri Anil Ahirwar got the CD prepared and submitted it before the Commissioner which was forwarded by the Commissioner to this Court.**

**I have gone through the report. The CD is stated to be the original CD. However, subsequently as stated above, it was found that the CD was a copy of the original CD prepared by Constable Shri Anil Ahirwar in a computer shop run by one Mohammad Ansar, who is reportedly expired.**

**In such a situation if we go through the provisions of Section 65-B of the Act, as quoted above, Sub section 2(a) provides that the computer by which copy was produced was used regularly to store or process information for the purpose of any activities. In this case, a video camera was used to prepare videography of various events during elections and that was under the control of Police Station Mhow where the Constable Shri Anil Ahirwar was also posted. Similarly, Sub section 2(a)(c) and (d) of Section 65-B of the Act can also be certified by the said Constable. Sub section (4) provides that the certificate should be signed by a responsible officer. The Constable Anil Ahirwar was posted and he was the person having knowledge of all the circumstances under which the copy was prepared and, therefore, he appears to be the proper person to issue the certificate in this regard. This view is also to some extent supported by judgment of Delhi High Court in the case of Kundan Singh Vs. The State 2015 Lawsuit (Delhi) 5843 dated 24.11.2015 in which it was held that the Doctrine of hearsay in its application to proof of electronic evidence has been limited a great deal. When it is not possible to produce certificate from person in charge of the computer system at that time, the person assuming charge later on can issue certificate. Such evidence cannot be eschewed merely on the ground of hearsay.**

**Accordingly, after going through the law laid down by the Hon'ble Apex Court in the case of Anvar**

**P.V.(Supra) and Harpal Singh (Supra), as also the provisions of Section 65-B of the Act, it is directed that the said Constable Shri Anil Ahirwar should issue a certificate in accordance with the provisions of Section 65-B of the Act pertaining to the CD submitted to the Commissioner during enquiry.**

..... "

74. Further, the Hon'ble Apex Court in a recent judgment passed in the case of **Sonu @ Amar vs. State of Haryana** in Criminal Appeal Nos.1416/2013, 1653/2014, 1652/2014 dated 18.07.2017, in paras 23 to 27 held that there are two kinds of documents that are admitted in evidence, one are those which are inherently inadmissible in evidence and in respect of those documents objection can be raised at any stage, however, in case where document is primarily admissible in evidence and the objection is only in respect of mode of proof, such documents like non production of a certificate issued under Section 65-B of Evidence Act or improper certificate issued under Section 65-B of Evidence Act, such objection can be raised only at the time of admitting the documents in evidence. The Hon'ble Apex Court in case of **Anwar P.V. (supra)**, observed that in United Kingdom after repeal of Police and Criminal Evidence Act 1984, the computer evidence follow the common law, where there is a presumption that the computer producing the evidential output, was recording properly at the relevant material time. This presumption can be reverted only if evidence to the contrary is

adduced.

75. In the present case, the CD was produced through a government agency and after taking into consideration peculiar circumstances, this Court allowed the certificate to be issued by the constable, who got the CD prepared from a computer shop in the market, and therefore, its genuineness cannot be doubted at this stage, and therefore, the objections in respect of admissibility of the CD, Article-F, have no force and are disallowed.

76. Accordingly, on issue No.3, the court reaches to the conclusion that respondent No.1 distributed medals and trophies from a stage which was erected by organizers of the function on the occasion of festival of Muharram observed by Muslim community of the area. He neither applied for erection of the stage nor it was proved that the stage was erected on his directions or he borne the expenses for erection of the stage. Similarly, it was also not proved that he borne the expenses for purchase of medals and trophies. Further, it was also not proved that such distribution of medals and trophies amounted to gratification, as mentioned in the Section 123 of the Act. The issue is decided accordingly.

#### **Issue No.4**

77. In this issue, the material pleadings in respect of this issue are in paragraphs Nos.23 to 26. The same can be reproduced

below :-

"23. That, on 19.11.2013 at about 12.00 noon, the respondent No.1 for his election campaign visited Pensionpura area of his Constituency and performed Padyatra and visited door to door to meet the voters. During such Padyatra, number of female voters welcomed the respondent No.1 by performing Aarti"and putting "Tilak"on his forehead and in lieu of such welcome, the respondent No.1 distributed currency notes of Rs.100/-, 500/- and Rs.1,000/- to them. This incident of distribution of currency notes was widely published in daily newspaper "Patrika" dated 20.11.2013 along with photographs. An extract of Patrika dated 20.11.2013 is enclosed herewith as Annexure P/15.

24. That, the aforesaid incident of distribution of currency notes on 19.11.2013 was also displayed in a National news channel "India news" on 19th and 20th of November, 2013. The petitioner is in possession of the video recording of the display of such news in "India News" channel in the form of Compact Disc which is filed herewith and marked as Annexure P/16.

25. That, the aforesaid incident of distribution of notes on 19.11.2013 at Pensionpura by the respondent no.1 was witnessed by Shri Neeraj Singh, S/o Shri Man Singh, Shri Lakhan Singh, S/o Shri Om Singh and Shri Inder Singh, S/o Shri Bhim Singh.

26. That, the currency notes were distributed by the respondent no.1 as stated above, was only with a view to influence a voter to vote for him in the election. Thus, by distributing notes, the respondent no.1 directly induced the voters to vote for him in an election. This act of distribution of notes for inducing the voters to vote for his in an election amounts to a corrupt practice as defined under Section 123 of the Act. Since the respondent no.1 has committed corrupt practice, his election is liable to be set aside."

78. Respondent denied the pleading in para 9 of his reply.

"9. Reply to para 23 to 26 :- As regarding the allegation made in the paras under reply, it is submitted that the same being false and untrue are liable to be rejected summarily. It is submitted that while the

answering respondent was campaigning extensively in his constituency, including Pensionpura, it is denied that any such incident as alleged by the petitioner even took place. It is submitted that no currency notes of Rs.100/-, 500/- or Rs.1,000/- as alleged were distributed by the answering respondent to anyone in Pensionpura, much less to female voters who allegedly performed Arti or put Tilak on his (answering respondent's) forehead. It has also been wrongly alleged that the answering respondent performed padyatra in Pensionpura Area on 19.11.2013 at 12.00 noon. As already submitted the answering respondent had campaigned extensively in his constituency, which had necessitated walking in many areas. However, the said walking cannot be equated with a padyatra which has an entirely different connotation.

In the above behalf it may also be stated that the allegation made in the paras under reply are allegedly based on 3 pieces of evidence, i.e. (i) the newspapers report of 20.11.2013 in the "Patrika" newspaper, (ii) the news report in India news channels and (iii) the alleged eye witnesses namely Shri Neeraj Singh S/o Shri Mansingh, Lakhan Singh S/o Shri Om Singh and Shri Inder Singh S/o Shri Bhim Singh. It is submitted that so far as the "Patrika" newspaper is concerned, no reliance can be placed on the same as it is in the nature of an uncorroborated secondary piece of evidence. It may also be stated that there is no connection between the photographs and the alleged incident as reported in the said newspaper. Besides, as already submitted, the said newspaper is very hostile to the answering respondent. Accordingly, while no reliance can be placed on the aforesaid evidence, it is submitted that even if for the sake of argument it is assumed that some female voters performed Arti or applied Tilak to the answering respondent as alleged, even then the same would not constitute any corrupt practice.

As regarding the news item in the India news channel, it is submitted that the said news item is of no evidentiary value not only for the same reason as applicable to the news item which appeared in the "Patrika" newspaper, but also for the reason that the provisions of law regarding to the admission of electronic evidence have not been complied with. As regarding the three gentlemen named as witnesses to the alleged

**incident, it is submitted that being partisan witnesses no useful purpose would be served by examining the said witnesses. Besides, the petitioner has not produced anything to show that the said three persons were actually eye witnesses to the alleged incident. As regards the petitioner's submission in para 26 of his petition that the alleged distribution of notes induced voters to vote for the answering respondent, it is submitted that the said allegation being baseless, false, untrue and incorrect is liable to be rejected summarily. It is submitted that the answering respondent did not do anything which amounts to corrupt practice under Section 123 of the RP Act. Further, as already submitted, not only did the alleged incident not take place, but the performance of Arti or applying of Tilak by women voters do not amount to corrupt practice."**

79. From going through the pleadings of both the parties, it is apparent that according to the petitioner, on 19.11.2003, at about 12.00 noon, respondent No.1 visited Pensionpura area of Mhow constituency of Vidhansabha and he performed 'Padyatra' in which, he visited door to door to meet voters. During such Padyatra, number of female voters welcomed respondent No.1 and placed 'Tilak' on his forehead. They also performed 'Arti' to honour him and in return, he distributed currency notes in denomination of Rs.100/-, 500/- and Rs.1,000/-. This news was covered by newspaper 'Patrika' and item was published on 20.11.2013. The same was also telecast on a national news channels "India News" on 19 & 20 November, 2013. The incident was witnessed by one Neeraj Singh S/o Maansingh, Lakhan Singh S/o Omsingh and Indersingh S/o Bhimsingh. According to

the petitioner, this distribution of currency notes was for influencing the voters to vote for him in the election and it amounts to corrupt practice under Section 123 of the Act.

**80.** Respondent No.1 denied all the averments made in the petition regarding distribution of currency notes of various denomination at Pensionpura area of Mhow.

**81.** The petitioner examined himself as P.W.-1. In para 9 of his statement, he said that on 19.11.2013, respondent No.1 during his mass contact 'Padyatra' distributed currency notes in denomination of Rs.100/-, 500/- and 1,000/- and news item was also published in various newspapers. Indersingh (P.W.-5) in para 1, said that he was distributing pamphlets on behalf of congress candidate and petitioner- Antar Singh Darbar. Some people came there and informed the female voters of the area that respondent No.1 was reaching there and that they should get their plates ready for performing 'Arti' and for this, they will get some money. Respondent No.1 came there alongwith dhol players, and thereafter, female voters started performing 'Arti' and respondent No.1 started giving currency notes of Rs.100/-, 500/- and 1,000/- to different voters. According to this witness, he witnessed the event from approximately six feet. Some people tried to photograph the event and persons, who came with respondent No.1 tried to stop them from doing so. He informed the petitioner



about the incident after that. Niraj Singh is P.W.-6, according to whom, he was canvassing for candidate of congress party. The petitioner at Pensionpura, Mhow at about 12.00 to 12.30 p.m. respondent No.1 came there, the persons who came before him asked the female voters to perform 'Arti' of respondent No.1 and also the female voters were told that they would get money for it. Kunal Kishore P.W.-14, also stated the same facts in para 3 of his statement. He, as stated earlier, was working for the newspaper 'Patrika' and was posted at Mhow. Virendra Raikwar (P.W.-15) was working for India News "TV Channel". This witness turned hostile and did not support the case of the petitioner. He even said that he never visited Mhow to videograph anything, however, when he was shown the CD, he changed his version and said that in the CD, the respondent No.1 could be seen distributing something. In para 5 of his statement, he said that the CD was prepared by one Vishal Sharma and he sent videograph to him. He also discussed the matter on phone with the said Vishal Sharma. He further forwarded the contents of videography to the Head Office at Delhi, but he refused that when he talked to anchor on phone which process is known as 'phono', he ever informed him that respondent No.1 distributed currency notes.

**82.** Ashish Shashtri (P.W.-17) is a resident of Tehsil Mhow and he lives in Mhowgaon which is a locality of Tehsil Mhow.

According to him, on 19.11.2013 he was going by his car from Rikshabedi village towards Mhow, Pensionpura falls on way and there he saw respondent No.1 visiting door to door and appealing the female voters to vote for him. The female voters were performing 'Arti' and putting 'Tilak' on his forehead and he was distributing currency notes of denomination of Rs.100/-, 500/- and 1,000/-. He was known to Vishal Sharma, who was videographing the event. He requested Vishal Sharma to provide him a copy of it on which he said that first he would provide the copy to his news channel and then he would provide the copy to him and after one or two days, he again met Vishal Sharma and obtained the recording of videography through a Pen Drive on his laptop. According to him, Vishal Sharma came to his house, he was having pen drive ready with him. He transferred the data from pen drive to his laptop. From the laptop, he again saved it in pen drive, which is produced before the Court alongwith certificate. The certificate is **Ex.P-42**.

**83.** In response, respondent No.1 Kailash Vijawargiya examined himself and in his statement, in para 3 he admitted that on 19.11.2003 he was on mass contact in Pensionpura Mhow. He also admitted that during his visit some people welcomed him, but he denied that he gave anything to the persons, who welcomed him. He was shown **Ex.P-14** which is a news item in

public newspaper. He denied that in this photograph he could be seen distributing currency notes. R.W.-12 Shushila Pardeshi, R.W.-3 Munnibai, R.W.-4 Babita, R.W.-5 Chakrawarti and R.W.-6 Varsha Choudhari were the women voters to whom he allegedly gave the currency notes, however, in their statements before the Court, they denied the fact that respondent No.1 gave them any currency notes. In their statements, they stated the same facts that respondent No.1 came to their locality and they all welcomed him by garlanding him, performing 'Arti' and by putting 'Tilak' on his forehead. But they all denied that respondent No.1 gave them any currency notes.

**84.** From the statement and from the evidence as marshalled above, it is apparent that respondent No.1 visited Pensionpura area of Mhow constituency and there female voters welcomed him. Now, it is to be seen whether from the video recording of the event, it can be seen that he was distributing currency notes to the voters.

**85.** Before proceeding to view the electronic evidence, first we may take into consideration the admissibility of Article B, C and D. Articles B and C are CDs and Article D is a Pen Drive. Article B is produced by Kunal Kishore (P.W.-14). According to him, the news regarding the incident that took place on 19.11.2013 at Pensionpura, in which allegedly the respondent distributed

currency notes, was published in edition that was released on 20.11.2013. He covered the incident and he also took some photographs, which was in CD, which was produced by him in three copies. The CD was marked as Article B and objection was taken by learned counsel for respondent No.1 which was recorded in the deposition sheet dated 13.01.2016. In para 7 of statement of this witness, he said that since memory card of the camera from which the photograph was taken is not produced along with the CD, the CD is not admissible in evidence.

**86.** Learned counsel for the applicant, however, said that under the provisions of Section 65B of Evidence Act, the secondary evidence is produced and the secondary evidence as such is admissible without producing the primary evidence and as such, the production of memory card is not necessary.

**87.** I have gone through the provisions of Section 65B of Evidence Act and it is apparent that when secondary evidence is produced, production of primary evidence is not required. Sections 65A and 65B of Evidence Act are code in itself and that override the provisions of Section 65 of Evidence Act, as such, when a certificate is produced in proper form, primary document or memory card is not required to be produced.

**88.** Now, in this case, it is to be seen whether Ex.P-41 which was produced along with the CD by the petitioner is in proper

form and whether in light of that certificate, the CD is admissible.

**89. Ex.P-41** was issued by Subhash Sharma, who was stated to be a librarian in the office of "Patrika" newspaper under whose custody, the photographs were stored in electronic form. He issued the certificate, but he was not produced by the petitioner. When the person issuing the certificate is not produced that certificate itself is not proved and therefore, in absence of proper certificate, CD, Article B cannot be read in evidence.

**90.** So far as Article C is concerned, in this case, CD is produced by Ashish Shashtri (P.W.-17). It is already mentioned above, how he prepared the CD. The CD contains photograph taken of a news item which was being telecast on a TV channel. As such, the Article C is a copy of the news item report, reported on a news channel on a TV which in itself is a hearsay evidence. A coordinate Bench of this Court in its order dated 23.01.2017, passed in EP 19/14, quoting the observations of Hon'ble Apex Court in case of Quamarul Islam vs. S.K. Kanta & Ors., AIR 1994 SC 1733 and Samant N. Balkrishna vs. George Fernandez & Ors., AIR 1969 SC 1201, in para 19 to 21 of its order observed as under :-

**"19. In Quamarul Islam (supra), Hon'ble the apex Court dealing with the proof and evidential value of newspaper report has held as under:-**

**" Newspaper reports by themselves are not evidence of the contents thereof. Those reports are only hearsay evidence. These have to be**

**proved and the manner of proving a newspaper report is well settled. Since, in this case, neither the reporter who heard the speech and sent the report was examined nor even his reports produced, the production of the newspaper by the Editor and publisher, PW4 by itself cannot amount to proving the contents of the newspaper reports. Newspaper, is at the best secondary evidence of its contents and is not admissible in evidence without proper proof of the contents under the Indian Evidence Act."**  
(emphasis supplied)

**20. In Samant N. Balkrishna (supra), Hon'ble the apex Court has observed as under:**

**".....A news item without any further proof of what had actually happened through witnesses is of no value. It is at best a second-hand secondary evidence. It is well known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible..."** (emphasis supplied)

**21. It clearly emerges from the aforesaid enunciation of law that a newspaper report by itself is no evidence of its contents and that such report is only hearsay evidence. It further emerges from the aforesaid pronouncements that to prove the contents of the newspaper reports, the reporter, editor or publisher who can testify as to how, when, from where and in what manner the material published in the newspaper was collected ,should be examined."**

**91.** As such, so far as the CD is concerned, it contained a hearsay evidence, as photographs taken by this witness of a news item, which was being telecast on a news channel on TV is itself a hearsay evidence.

**92.** So far as the Pen Drive, Article D, is concerned, in respect of this Pen Drive, the witness said that photographs were taken by Vishal Sharma, who has died subsequently in 2014, and as such, he could not be produced. He obtained copy of the video from him which he loaded on his laptop from a Pen Drive that he was carrying at that time. Subsequently, he sold computer and purchased the another one from which he prepared the Pen Drive, Article D.

**93.** The basic purpose of Section 65B of Evidence Act is to ensure that the electronic evidence produced before the Court is not morphed. However, in the present case, the person, who prepared the video was dead and therefore, the video prepared by him cannot be said to be the copy of the one which he took, the way it was produced, does not imbibe a confidence in the mind of this Court, and therefore, such evidence cannot be accepted.

**94.** Subject to these observations regarding admissibility of Articles B, C and D, now, we may proceed to view the electronic evidence and briefly state what is visible in there.

**95.** Article B is a CD prepared by Kunal Kishore (P.W.-14) which was filed before Court and the relevant certificate under Section 65B is **Ex.P-41**. This CD was viewed by me and in file No.MH19NOV17 it was alleged by the petitioner that respondent No.1 was seen having a currency note in his hand while the

respondent said that he was having a 'laddu' in his hand. In the picture available in the file something is seen which he was holding in his right hand. His hand along with material in it is encircled by red colour in the picture. I have zoomed the relevant portion of the picture upto the extent possible, but even after minutely observing the material, I do not find it possible to see with certainty that it was a currency note in which number was visible.

**96.** The next file is MH19NOV18 in which his hand is beneath steel thali, it was alleged that from beneath thali, he was giving something to the women, who placed "Tilak" on his forehead, however, since his hands are hidden under the thali, it cannot be presumed that he was giving a currency note to the women.

**97.** The next file pointed out is MH19NOV19 in which it was found that he was holding hand of the woman and he was giving her something, but though he appeared to have hand of the lady in his hand, holding it by left hand, no currency note is shown in the picture either in his hand or in the hand of the lady. In Article B only these three files were pointed out during the final argument by the counsel for the petitioner.

**98.** Article C is also before us. In this Article, according to the counsel for the petitioner four time slots were specifically pointed out, they were 2:10 to 2:40, 5:13 to 5:25, 6:30 to 7:11 and 7:20 to



8:10. In these time slots, according to the petitioner, he was seen obstructing the camera from videography. The anchor corroborates the persons of Virendra Raikwar (P.W.-15) and respondent No.1 were seen giving currency notes under the thali.

**99.** After playing the CD, I have minutely observed the video available in the CD and though at some point, it was seen that one of the supporters of the respondent No. 1, were giving something to the person, who was welcoming respondent No.1. Currency note was not clearly visible in the picture. The anchor was talking to Virendra Raikwar (P.W.-15), however, Virendra Raikwar is not visible and he was talking to him on phone or some other device.

**100.** Article D is a Pen Drive presented by Ashish Shashtri (P.W.-17). In this Article time slots 00:00 to 00:35, 2:35 to 2:40, 3:15 to 3:37 and 5:15 to 5:28 were pointed out alleging that in these time slots respondent No.1 could be seen offering money to idol at Temple, obstructing the camera from taking picture and distributing currency notes through his workers and himself under a thali. I have played the contents of the Pen Drive on computer and minutely observed the time slots pointed out by the petitioner and in such time slots though he was seen giving something to the person, who welcomed him, but in no picture, after going through it, several time, I could find that currency note was seen and in such a situation, it cannot be said that the picture in the Articles B,

C and D as aforesaid proved that he distributed currency note to the person through his door to door propaganda.

**101.** In aforesaid situation, in respect of this issue, it was proved that he undertook a Padyatra for contacting people door to door and it was proved that some women performed his "Arti" and also placed "Tilak" on his forehead, however, it was not proved that he distributed currency notes of various denominations as said above. The issue is decided accordingly.

**Issue No.5-**

**102.** This issue relates to speech by Chief Minister of the State, Noticee No.1 Shivraj Singh Chouhan in a public meeting arranged by respondent No.1. The pleading in respect of this issue may be found in para 27 and 28 of the petition.

**"27. That, the Chief Minister of the State Shri Shivraj Singh Chouhan had addressed a public meeting on 20.11.2013 between 12.00 noon to 3.00 p.m. in Padmashree Shankar Laxman Stadium, Mhow. Thousands of persons were present in such public meeting. During his speech in such public meeting, the Chief Minister had declared that a Metro train would be provided from Mhow to Indore. He further made a declaration that the poor persons would be provided 'patta'of the land and thereby they would be made Bhumi-swamis. The aforesaid acts amounts to an offer or promise by the Chief Minister to the electors of the Constituency for inducing them to vote for the Bhartiya Janta Party candidate i.e. respondent No.1 in the elections. The respondent No.1 was also present on the stage along with the Chief Minister in such public meeting. The respondent no.1 was thus a consenting party to the offer or promise or inducement made by the Chief Minister of the State to the voters of the Constituency for**

inducing them to vote for him. Such offer or promise made by the Chief Minister with the consent of the respondent No.1 amounts to committing corrupt practice as defined under Section 123 of the Act and, therefore, the election of the respondent no.1 deserves to be set aside on this ground also. The offers and the promises made by the Chief Minister in the aforesaid public meeting was duly published in daily newspaper 'Patrika' dated 21.11.2013 published from Indore, a copy of which is enclosed herewith as Annexure P/17.

28. That, Shri Narendra Saluja, Spokesman of the Madhya Pradesh Congress Committee had submitted an objection to the Returning Officer on 20.11.2013 about the offers/promises which the Chief Minister had made in the public meeting held on 20.11.2013 at Mhow. A copy of such complaint is enclosed herewith as Annexure P/18. In such complaint, it is specifically mentioned that the offers and the promises made by the Chief Minister amounts to an inducement to the voters of the Constituency to vote for the respondent no.1 in the election."

103. According to the pleading the Chief Minister in the meeting declared that a Metro Train would be provided from Mhow to Indore. He also declared that poor persons would be provided patta of the land under their possession and they would become Bhumiswami.

104. According to the petitioner, this amounts to offer and promise by the then Chief Minister on behalf of respondent No.1 inducing them to vote in favour of respondent No.1 in the Vidhan Sabha Election.

105. In reply, respondent No.1 denied the allegation and his pleadings are in para 10 of the reply which are as follows :-

"Reply to para 27 :- The allegations as made in the para under reply are not only denied but the same also do

**not affect the validity of the answering respondents' election in any way. It is submitted that while the public meeting as mentioned in the para under reply was held, it is denied that at the same meeting the Hon'ble Chief Minister made any declaration or promise with the consent of the answering respondent. It is further submitted that the Hon'ble Chief Minister was well within his rights to make the speech which he did but unfortunately it has been distorted and not correctly pleaded in the para under reply. It is also significant that unlike the other allegations made by the petitioner, he has not cited any other evidence in support except for the alleged complaint by one Shri Narendra Saluja (purporting to be the spokesperson of MPCC) to the Returning Officer. However, even if for the sake of arguments it is assumed that the alleged speech of the Hon'ble Chief Minister contained the declaration/promises attributed to him, even then the same would not amount to a corrupt practice attributable to the answering respondent U/s 123 of the RP Act."**

**106.** Following evidence is produced by the petitioner and the respondent and also the noticee on this aspect.

Antar Singh Darbar (P.W.-1) is the petitioner, who stated in para 10 of his statement that in public meeting held on 20.11.2013 in which the Chief Minister addressed to the public that if respondent No.1 would win the election, Metro Train would be brought to Mhow and it was also declared that landless person would be given patta of the land.

**107.** Narendra Saluja (P.W.-2) was appointed by Congress Party to observe any breach of Code of Conduct. In para 4 he stated that on 20.11.2013 he came to know that there would be a public meeting arranged by Bhartiya Janta Party. He was present in the

corridor of Dreamland Talkies from where he heard the Chief Minister. Then, the witness said the Chief Minister made the above two declarations from the stage.

**108.** Akash Tripathi was the Collector and District Election Officer, Indore at the time of election and according to him, videography of such occasions like the public meeting of the Chief Minister and respondent No.1 is usually done. He said that it must have been done, as such meetings are important occasions.

**109.** Kunal Kishore (P.W.-14) is correspondent of "Patrika" newspaper. He also covered the public meeting held on 20.11.2013 and he stated in para 4 of his statement that the Chief Minister made the above two declaration.

**110.** Kailash Vijaywargiya (R.W.-1) in his statement in para 4 admitted that a public meeting was held on 20.11.2013 in which Chief Minister, Noticee No.1 Shivraj Singh Chouhan delivered a speech. He further stated that he was not knowing what the Chief Minister would say in the meeting. Whatever he said in the meeting, he said it according to his own wisdom and he was not informed as to what he would say in his statement. He was cross examined in para 31, 32, 33 and 36 and denied that declaration was made to induce the voters to vote in his favour.

**111.** From the evidence as described above it is apparent that public meeting was held on 20.11.2013 in which Noticee Shivraj

Singh Chouhan addressed the public meeting. From the CD it is also proved that he made the above two declarations. It is to be seen whether the declarations by Chief Minister of the State amounted to any corrupt practice or inducement to the voters to vote in favour of respondent No.1 and it is also to be seen whether by such declaration the election of the respondent No.1 was materially affected. Further, the liability of the Noticee Shivraj Singh Chouhan was also to be determined whether he committed any corrupt practice to warrant declaration of his name under Section 99 of the Act.

**112.** Learned counsel for the Noticee submits that there was already a provision of extending Metro railway line upto Mhow in subsequent phases and this was incorporated in the pre-feasibility report which was produced alongwith DPR (Detailed Project Report) before the Court. The map clearly showed that nearby small towns of Indore shall be connected with metro train network after completion of work at Indore.

**113.** So far as videography of the public meeting held on 20.11.2013 in which Shivraj Singh Chouhan, the then Chief Minister of M.P. delivered a speech, CD of Article E is produced by the petitioner. This CD, according to him, was obtained by him under the provisions of Right to Information Act and for this Santosh Kumar Taigore (C.W.-2) was examined as a witness and

he stated in his evidence that the CD marked as Article E was supplied to the petitioner in response to his application filed under the provisions of Right to Information Act. The necessary certificate under Section 65B of Evidence Act is **Ex.C-8** in which it was stated that DVD was being provided by him to the petitioner and the DVD was extracted from original video cassette in which videography was recorded and found at Election Store Department. He received the cassette from one Yogesh Khilare, who was working as Upper Division Clerk and prepared the copy with the help of Mr. Jimi Saxena by adopting a process of rendering method. He also certified that the CD contained true reproduction of contents in the original cassette. He also certified that all the requirement of Section 65 B of Evidence Act was complied in respect of device from which the CD was prepared.

**114.** Though, I find that complete description of the device used in preparation of the copy is not elaborately given in the certificate, however, it cannot be doubted since it is provided by a Government Agency and there is no evidence to show that there was any possibility of tampering of this electronic document, which was produced before the Court. As such, the contents of the DVD can be accepted in evidence and can be relied upon.

**115.** Going through the CD, it is apparent that Shivraj Singh Chouhan, Noticee No.1 addressed the meeting on 20.11.2017 in

which he made an announcement that Metro Train will be brought upto Mhow and second announcement he made that patta will be given to poor persons.

**116.** Learned counsel appearing on behalf of Noticee submits that there was already a DPR in which provision was made that in second phase, metro line would be extended upto Mhow though from his speech, it appears that it was so worded that it connotes a meaning that till that date there was no plan to extend the metro line upto Mhow, however, fact remains that the DPR provided extension of metro line, and therefore, it cannot be said that he promised something which was earlier not under consideration. So far as 'patta' is concerned, he also pointed out that law known as The Madhya Pradesh Nagariya Kshetro ke Bhoomihin Vyakti (Pattadhriti Adhikaron ka Pradan Kiya Jana) Adhiniyam, 1984 was already promulgated before he made an announcement and every patta so issued would be issued in accordance with law made by the State Legislature and as such since he was a Chief Minister and he was acting on behalf of Government, it could not be said that he was an agent of the return candidate respondent No.1 and for this, he placed reliance in case of **H.V Kamath vs. Ch. Nitiraj Singh; 1970 AIR 211.**

**117.** In this case, there were allegations that by ordinance the Government of the State in which the Congress Party was in



power, granted exemption to certain agriculturists' holding, from payment of land revenue and second allegation was that the Chief Minister on the eve of election announced increased dearness allowance to certain government employees. The Hon'ble Apex Court observed that such decisions were taken by the government and the Chief Minister was not a representative of the return candidate, and therefore, it cannot be said that by such announcement, his election was materially affected and it can also not be said that the candidate was responsible for any corrupt practice.

**118.** Applying the principle laid down by the Apex Court in case of **H.V. Kamath (supra)**, it is apparent that the Noticee No.1 was also on the post of Chief Minister, what he announced was already on record and was already on consideration and the patta which he announced was also provided for by an act of State Legislature and it was also expected that such patta shall be provided in accordance with provision of an act passed by State Legislature, and as such, against this issue, it cannot be said that respondent No.1 or noticee No.1 indulged in any kind of corrupt practice. The issue is decided accordingly.

#### **Issue No.6**

**119.** This issue relates to alleged distribution of liquor on 20.11.2013 at villages Mein and Adapahad to induce the voters to

vote in favour of respondent No.1. The relevant pleadings in respect of this issue in paragraph Nos.29 to 32 of the petition which are as under :-

**"29. That, the respondent no.1 had also got distributed liquor in a large scale in the Constituency. On 20.11.2013 in the evening at about 7.00 to 8.00 p.m., the country liquor was distributed amongst the voters in Village Mein and Aada-Pahad which fall within the territorial jurisdiction of P.S. Badgonda as also 209, Dr. Ambedkar Nagar, Mhow Vidhan Sabha Constituency. The country liquor was brought in a Tata Truck 407 bearing registration no.MP09 KC-6092 and one Kamal Patel and few other persons were present in such truck. After distributing the country liquor in Village Mein and Aada-Pahad, the same was proceeding towards other Villages for distribution of liquor. The Police Station Badgonda seized the said truck with 170 boxes of country liquor on the same day i.e. 20.11.2013 in the night. The total cost of such country liquor was assessed at Rs.2.45 lacs. The Police Station Badgonda registered Crime No.591/13 under Sections 171-B/171-E of the IPC against Kamal Patel and other persons. Smt. Seema Patel who is the wife of Kamal Patel is the President of Nagar Panchayat, Manpur and was elected as such as BJP candidate. Shri Kamal Patel has been nominated as MLA representative by the respondent no.1 in Nagar Panchayat, Manpur, Tahsil Mhow, District Indore. Shri Kamal Patel belongs to the Bhartiya Janta Party and is the representative of respondent no.1 in Nagar Panchayat, Manpur. The liquor was thus being distributed by Shri Kamal Patel and other persons at the instance and consent of the respondent No.1 to the voters of Villages Mein and Aada Pahad to directly induce them to vote for respondent No.1.**

**30. The seizure of the aforesaid truck with 170 boxes of country liquor was highlighted in the newspapers "Patrika and Raj Express" both dated 21.11.2013 published from Indore. An extract of such newspapers are filed herewith and marked as Annexure P/19 and P/20 respectively. The Returning Officer of the constituency- respondent no.11 had supplied information**

of the aforesaid incident to the Collector and District Returning Officer, District Indore vide letter dated 24.11.2013, a copy of which is enclosed herewith as Annexure P/21. The respondent no.11 had also written a letter to Shri Sanjay Tiwari - Nodel Officer and Assistant Commissioner, Excise Department on 24.11.2013 that appropriate action be immediately taken against the offenders. A copy of such letter is enclosed herewith as Annexure P/22. Annexures P/21 and P/22 have been obtained by the petitioner under Right to Information Act.

31. That, Shri Dhara Singh S/o Budhiya, aged about 30 years, R/o Village Aada Pahad, Tahsil Dr. Ambedkar Nagar, Mhow, District Indore and Shri Kamal S/o Mangilal, aged about 32 years, R/o Village Mein, Tahsil, Dr. Ambedkar Nagar, Mhow, District Indore were present when the distribution of country liquor was made by Shri Kamal Patel and other persons to the voters of the said Villages as an inducement to vote for respondent no.1 on 20.11.2013. Shri Dhara Singh and Shri Kamal were also given the country liquor as an inducement for giving vote to the respondent no.1.

32. The distribution of liquor amounts to a corrupt practice as defined under Section 123 of the Act and, therefore, the election of the respondent no.1 deserves to be set aside under Section 100 (1) (b) of the Act."

120. Reply on behalf of respondent No.1 may be found in para 12 of reply filed on behalf of respondent No.1.

"Reply to para 29 to 32:- Denied. The entire allegations made in the paras under reply are specifically denied being based upon assumptions and surmises of the petitioner which have no relation to the present petition. No liquor as mentioned was ever distributed by the answering respondent. The incident as presented by the petitioner has no connection with the answering respondent. It is for the police authority to take appropriate legal action against the person concerned. The answering respondent has no connection with either the persons or the truck who/ which are alleged to be involved in the alleged incident. The answering

**respondent also has never consented to any corrupt practice as alleged by the petitioner. Similarly, the allegations made by the petitioner in the para under reply with respect to Mr. Kamal Patel and Mrs. Seema Patel have neither any connection with the answering respondent nor to the same amount to any corrupt practice indulged in by the answering respondent. It is further submitted that the allegation made by the petitioner relating to the alleged seizure of the truck in question purporting to contain liquor are not connected with the answering respondent. Accordingly, the averments made by the petitioner in the paras under reply are vehemently and specifically denied. No liquor as alleged by the petitioner was ever disputed by the answering respondent or with his consent to influence any voter. The said allegation being false, fabricated and baseless is also vehemently denied by the answering respondent."**

**121.** In respect of this issue, a notice was given to Shri Kamal Patel, who according to the pleadings allegedly distributed the liquor on behalf of respondent No.1.

**122.** Relevant portion of evidence adduced by the petitioner and respondent No.1 and the Noticee Kamal Patel may be summarized as follows.

**123.** Antar Singh Darbar (P.W.-1) stated in para 11 of his statement that on 20.11.2013, Kamal Patel, who was agent and representative of respondent No.1 was distributing liquor and the liquor was being transported and loaded in a vehicle bearing registration No.MP-09-KC-6092. In respect of this vehicle, a complaint was lodged by Rameshwar Patel in Badgonda Police Station and acting on his complaint, Badgonda Police Station

seized 170 boxes of liquor and next day on 21.11.2013 news items was published in 'Patrika' and 'Raj Express' newspapers. This witness was cross examined in paras 24 to 29 of his statement.

**124.** Next witness is Bekunth Patel (P.W.-7), who stated in his examination-in-chief that he is a resident of village Medh, on 20.11.2013, he remembered the specific incident. On that day between 7.00 to 7.30 p.m., he was standing outside his shop, an XUV vehicle which was black in colour, passed from the road in front of his shop and behind the vehicle, one Tata 407 vehicle was also following. In Tata 407 vehicle Kamal Patel was sitting. He is a representative of respondent No.1 because his wife was President of Nagar Panchayat, Maanpur. When the vehicle passed in front of his shop, he waived to Kamal Patel, as he was known to him The loading portion of the vehicle was fully covered with tarpaulin, due to which, he suspected that there must be something objectionable loaded in the vehicle, and therefore, they decided to check the vehicle because Kamal Patel was travelling in the vehicle and if Kamal Patel was travelling in some vehicle, there must be something objectionable in that vehicle. He took Prakash S/o Hiralal Jat also resident of the same village and chased the vehicle, after 2 - 3 kms., he stopped the vehicle by placing motorcycle in front of it. Kamal Patel got down from the

vehicle, he asked him that he wanted to check the vehicle on which Kamal Patel, said that whatever he was understanding is the material that was loaded in the vehicle. when he asked what he was understanding, Kamal Patel said there was liquor in the vehicle and it belonged to respondent No.1. He also said that he has already passed many Police Post, the vehicle belonged to respondent No.1, and therefore, there is no point of objection. Seeing some commotion on the spot, some villagers came there in which Radheshyam Patel was also included, who was son of his paternal aunt. He asked him to go and inform the police. After 20 minutes, police came there. Meanwhile, they flattened the tires of the vehicle by releasing the air, and thereafter, when police came, Kamal Patel, Noticee No.2 fled away in the XUV vehicle, which was running in front of the Tata 407 vehicle. The police took the vehicle to Badgonda Police Station, and thereafter, the liquor was seized and necessary proceedings were undertaken.

**125.** Akash Tripathi (P.W.-9) was the Collector, Indore on that time. He said that he received a complaint in respect of distribution of liquor and he wrote to the concerning Police Station and Excise Department to take necessary action.

**126.** Vijay Agrawal (P.W.-10) was posted as SDM. He admitted that he received an intimation regarding distribution of liquor and he filed letter **Ex.P/30**. Assistant District Excise Officer wrote a

letter to Assistant Commissioner Excise. He prepared a report on 24.11.2013 and sent it to District Election Officer by **Ex.P-23**.

**127.** Sidhnath Chaturvedi (P.W.-11) was the Assistant District Excise Officer, he took necessary action after receiving the intimation. According to him, on 20.11.2013, he was on patrolling duty alongwith his team when he received intimation of illicit liquor being transported near Police Station Badgonda. On receiving intimation, he immediately proceeded towards Police Station Badgonda. There, he found Ajayabsingh, who was an observer in respect of expenditure during election. There, the vehicle bearing registration No.MP-09-KC-6092 of Tata 407 was parked, in which a total 170 boxes of liquor were loaded. He registered a crime and prepared necessary documents for seizure of the liquor. During the investigation, he found that the liquor was obtained from warehouse, Kukshi at 5.00 p.m. on 20.11.2013 and it was to be transported to a country liquor shop at Dikthan. Liquor was purchased by Yogesh Gautam (R.W.-15) through Ajay Saxena (R.W.-14) and after obtaining the liquor from the warehouse, Ajay Saxena loaded the same in the vehicle bearing registration No.MP-09-KC-6092 and the vehicle was released for Dikthan. The transit permit was also issued, which was upto Dikthan, and finally the vehicle was seized in the territorial jurisdiction of Police Station Badgonda. A seizure of the liquor is

**Ex.P-19/C** on which, Sidhnath (P.W.-9) signed. Spot map is **Ex.P-20**. According to this witness, he wrote a letter to Judicial Magistrate First Class, Mhow, which is **Ex.P-34**.

**128.** Tapish Pandey (P.W.-12) was posted on the post of Tehsildar. On 20.11.2013 on receiving intimation about the liquor, he went to the spot.

**129.** Kunal Kishore (P.W.-14) is a correspondent of newspaper 'Patrika'. In para 5, he stated that he published in newspaper a news item regarding the incident that took place on 20.11.2013 and according to the news item, 170 boxes of country liquor was seized by the police.

**130.** Kamal S/o Mangilal is P.W.-16, he stated that he is a resident of village Medh. On 20.11.2013, Kamal Patel came to his village in Baman Tekri area and he gave him two bottles of liquor and he also told him that the bottles were given on behalf of respondent No.1 and they said that as liquor was being given to them, they should vote in favour of respondent No.1. He further said that he consumed the liquor alongwith his mother.

**131.** Rekha Goswami is a councilor in Nagar Parishad, Maanpur and according to her, Kamal Patel used to attend all the meetings of Nagar Parishad on which they took an objection. On their objection, the Chief Municipal Officer informed them that he was attending the meeting in capacity of representative of respondent



No.1.

**132.** Bharat Singh Rawat (P.W.-20) was the Station-in-Charge of Police Station Badgonda. He said that he received an intimation of non cognizable offence which was entered into the register of non cognizable offences. He also received a letter from Additional Superintendent of Police, Mhow on which he made the entries which is Ex.P-53. He informed Additional Superintendent of Police that since it was a non cognizable offence, a permission of the concerning court had to be obtained. Thereafter, as the necessary action was being taken by Excise Department, he did not take any action in this matter.

**133.** Shivnarayan Singnath (P.W.-21) was posted as Sub-Inspector, Excise, on the relevant date, he received an intimation about the liquor from Sidhnath Chaturvedi (P.W.-11) on which he went to the spot and started investigating the offence. He seized total 170 boxes containing 8,500 bottles. The total quantity of liquor was 1530 bulk litres.

**134.** Kailash Vijaywargiya, respondent No.1 stated in para 5 that he was not knowing Kamal Patel and he did not assign any work regarding to election propaganda to him. Ajay Saxena (R.W.-14) was the Manager of Yogesh Gautam (R.W.-15), who was contractor, in whose name, the liquor was issued from warehouse, Kukshi. The liquor was meant for their shop at Dikthan. The

vehicle was being driven by Soma. After loading the liquor, he went to Dhar and did not go to Dikthan. The liquor did not reach Dikthan. The driver informed him that when he stopped the vehicle at Anand Dhaba for checking some refreshment, 4-5 persons came and they took the vehicle with them. He reported the matter at about 8-9 p.m. at Dikthan Police Post. He did not know Kamal Patel

**135.** Apart from these witnesses by petitioner and respondent, Adhar Singh is examined as court witness No.1. He was Chief Municipal Officer of Nagar Palika, Maanpur and he was examined to prove that Kamal Patel was the representative to attend meetings of Nagar Parishad, Maanpur to prove his connection with respondent No.1. Kamal Patel is examined as Noticee witness No.1 and he in his statement denied all the allegations. He also stated that he knew Bekunth Patel, his wife Maya Bekunth contested an election for the post of Surpanch of Medhgaon. His father Rameshwar Patel is President of Block Congress, Maanpur. He also stated that Yogesh Gautam (R.W.-15), who was contractor of the liquor in whose name the liquor was released from warehouse, is nephew of Balmukund Gautam, who was contestant from Dhar Vidhan Sabha constituency, as congress candidate. Both Balmukund Gautam and Yogesh Gautam were in business of selling liquor.

**136.** By way of documentary evidence, **Ex.P-17 to Ex.P-61** were filed and **Ex.P-74 to P-75** were also filed. By way of court documents **Ex.C-1 to C-5** were filed. These are mainly to prove that the Noticee Kamal Patel was representing respondent No.1 in Nagar Palika Parishad, Manpur. Noticee - Kamal Patel filed two documents N-1 and N-2. This apart, the record of Criminal Case No.925/2014, to the Court of Additional Chief Judicial Magistrate, Mhow District- Indore was also called by this Court and which is also available before us. This is the criminal case filed by Excise Department after seizure of the liquor which is still pending and relevant copies of the record are already exhibited as above.

**137.** From statement of Sidhnath Chaturvedi (P.W.-11), it was apparent that when this witness who was posted as Assistant District Excise Officer reached Police Station- Badgonda, he found the truck bearing registration No.MP-09-KC-6290 was parked in the premises of police station. It is also proved that 170 boxes of liquor containing 8500 bottles were seized from the truck. The Manager Ajay Saxena and the contractor Yogesh Gautam and driver of the truck Soma were made accused in this case. It was also proved that there appears to be no challenge to the fact that the liquor was issued in the name of contractor Yogesh Gautam and it was meant for his Country Liquor Shop at

Dikthan, District Dhar and it was also not much in dispute that the truck made a detour and it was found going towards village Ada-Pahad when it was intercepted by some villagers. For the purpose of the present petition, the only aspect to be considered is presence of Noticee Kamal Patel. The only major dispute appears to be on the point whether Noticee No.2, Kamal Patel was present there when the truck was seized and also whether he was travelling in the same vehicle in which the liquor was loaded. On this point, Bekunth Patel (P.W.-7) was examined. The respondent and the Noticee Kamal Patel tried to assail the statement of this witness on the ground that he was an active workers of Congress Party, and therefore, he was an interested person and his statement should be examined with caution. Bekunth Patel (P.W.-7) stated that the Noticee Kamal Patel was travelling in the same vehicle. This witness was examined on behalf of the petitioner. He said that his statement was recorded by Excise Department, which was enclosed in Criminal Case No.925/2014 and copy of which is **Ex.PN-1C**.

**138.** Learned counsel for the petitioner submits that the witness was not confronted with his previous statement in accordance with provisions of Section 145 of Evidence Act. On this point, he has placed reliance on judgment of Hon'ble Apex Court in case of **V.K. Mishra vs. State of Uttarakhan; (2015) 9 SCC 588** and

**Laxmibai (Dead) Thru Lr'S vs. Bhagwanthbuva (Dead) Thru Lr'S (2003) 4 SCC 97.** Section 145 of Evidence Act provides that the witness should be confronted with his previous statement and relevant portion of his statement should be read over to him and specifically marked as read over and his explanation should be obtained, however, in this case, specific portion was not read over to the witness, and therefore, his statement before this Court in respect of Noticee No.2, Kamal Patel travelling in the vehicle cannot be disbelieved.

**139.** Learned counsel for the respondent submits that earlier another version was given and it was stated that he was travelling in another black vehicle which was going in front of the truck in which the liquor was loaded, however, looking to the provisions of Section 145 of Evidence Act, it is apparent that the statement of the witness specially when he was an interested witness should be examined in light of his previous statement and since in this case, he was not properly confronted with his previous statement, there appears to be no reason to disbelieve his court statement.

**140.** Similarly, same is the situation with (P.W.-8) Prakash Jat. This witness was also present when the truck was intercepted. He alongwith Bekunth Patel (P.W.-7) chased the truck and intercepted it. He was also confronted with the statement in the criminal case in the similar manner, and therefore, the same was

the situation in case of this witness and their statements before the Court that the Noticee Kamal Patel was travelling in the same truck cannot be disbelieved. This apart, the statements were taken at the time of seizure of the liquor, presence of Kamal Patel was mentioned in their statements mainly there is a bit difference regarding the vehicle in which he was travelling, but stated above the Court statement on this point cannot be disbelieved, and therefore, it is proved that he was travelling in the same truck in which the liquor was loaded.

**141.** As such, the following points are proved :-

- (i) That the truck bearing registration No.MP-09-KC-6092 was seized by the police.
- (ii) The truck was loaded with 170 boxes of liquor containing 8500 bottles and Noticee Kamal Patel was travelling in the truck.
- (iii) The truck made a detour from the route prescribed in the permit.
- (iv) The liquor found in the truck was issued for sale through country liquor shop belonging to contractor Yogesh Gautam (R.W.-15) and it was issued by Ajay Saxena, who was Manager of Yogesh Gautam through Government Warehouse situated at Kukshi District Dhar.

**142.** Apart from these facts, there appears to be no dispute

regarding following facts which can also be taken as proved :-

- (i) That, an application during investigation was filed by Excise Department Dhar seeking permission of the Magistrate for arraying Kamal Patel as an accused during investigation of aforesaid case of seizure of liquor.
- (ii) The Magistrate disposed of the application stating in his order that no such permission was required as per relevant provisions of law and the Investigation Officer was free to array any person as an accused.
- (iii) An application under Section 319 of Cr.P.C. was filed by the Public Prosecutor after complaint was filed by Excise Department.
- (iv) However, Noticee Kamal Patel was not arraigned as an accused in this case which is still pending.

**143.** In the background of above facts now we may proceed to decide following points which would have bearing on disposal of this petition :-

- (i) Whether 30 boxes which were found missing from the truck when it was seized was distributed amongst the resident of village Medh and Ada-Pahad with a view to seeking their vote in favour of respondent No.1.
- (ii) Whether by such distribution, if any, election of respondent No.1 was materially affected.

(iii) Whether there was any consent of respondent No.1 in distribution of liquor, if any.

**144.** In para 29 of the pleading it was only pleaded that respondent No.1 got the liquor distributed in large scale in the constituency, and thereafter, the pleadings are in respect of facts how the truck was intercepted and seized, word consent does not appear in the pleading of the petitioner.

**145.** Learned counsel for the petitioner submits that Noticee Kamal Patel was a representative of respondent No.1 and he was closely associated. He represented him in Nagar Palika Parishad, Manpur and took part on his behalf as his representative. The letter appointing him as representative could not be produced as it came on record that it was lost from official records, however, some oral evidence was produced and for the purpose of disposal of this petition, it may be taken as proved that the Noticee Kamal Patel represented him in the meeting of Nagar Palika Parishad, Manpur. The relevant evidence produced by the petitioner has already been marshalled above.

**146.** Learned counsel for the petitioner submits that in Section 123(1) bribery was described in clause (a) as any gift, offer or promise by **candidate** or by **his agent** or by any other person with consent of **the candidate** or his **election agent**. He pointed out that in this Section word 'agent' was used which is not the



election agent, and therefore, any person who is closely associated with the present petitioner may be taken as his agent under this Section. Apart from this, the consent should be of the candidate himself or of his election agent. An explanation given under Section 123 of RP Act explains who can be called an agent.

The explanation can be reproduced below :-

**"Explanation.- (1) In this Section the explanation "agent" includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.**

(2).....

(3)....."

**147.** On this aspect, the pleading of the petitioner is not very clear. Word 'consent' was not used in para 29 as stated above, and therefore, there can be knowledge, connivance or consent of respondent No.1. We have to see whether there is any evidence to show that there was any knowledge, connivance or consent of respondent No.1.

**148.** Before proceeding to decide his consent, we must first see that whether there was large scale distribution of liquor on behalf of respondent No.1. To prove distribution of liquor, the petitioner examined Kamal S/o Mangilal (P.W.-16). He said that on 20.11.2013 Kamal Patel came to his village and he gave two bottles of liquor each to some persons. He came at about 6.00 p.m. They were also told to vote in favour of respondent No.1 as they were given liquor. This witness also said that some people

came on motorcycle to whom Kamal Patel gave one box or two boxes to everybody. Apart from this witness, no other witness was examined. Total 30 boxes were missing, according to evidence available on record, 30 boxes contained 1500 bottles, the burden was on the petitioner to prove that this liquor was distributed amongst the voters in the area and also by such distribution election of respondent No.1 was materially affected.

**149.** Apart from the single witness who stated the distribution of two bottles by Kamal Patel no other evidence is available. His statement appears to be unnatural. Within two hours, it is not possible for the Noticee Kamal Patel to distribute 1500 bottles individually to voters and that too at evening time when everybody could see him distributing the liquor. An option was also available to him that he would supply boxes to various individual workers in various areas and such workers could distribute the liquor during the night. No such evidence was produced that liquor was distributed by his workers in the night of 20.11.2013.

**150.** So far as the consent is concerned, the learned counsel for the petitioner argues that such consent should be presumed by circumstances. On this aspect the judgment of Hon'ble Apex Court in case of Anvar P.V. vs. P.K. Basheer and Ors.; (2014) 10 SCC 473 is of great use. In this case, the allegation of

publication of 25,000 copies of leaflets containing false statement regarding involvement of appellant, Anvar P.V. in the murder of one Munaf on 13.04.1995. The Hon'ble Apex Court observed in para 31 of the judgment, reads as under:-

**"31. Learned Counsel for the appellant vehemently contends that consent needs to be inferred from the circumstances. No doubt, on charges relating to commission of corrupt practices, direct proof on consent is very difficult. Consent is to be inferred from the circumstances as held by this Court in Sheopat Singh v. Harish Chandra and another. The said view has been consistently followed thereafter. However, if an inference on consent from the circumstances is to be drawn, the circumstances put together should form a chain which should lead to a reasonable conclusion that the candidate or his agent has given the consent for publication of the objectionable material. Question is whether such clear, cogent and credible evidence is available so as to lead to a reasonable conclusion on the consent of the first respondent on the alleged publication of Exhibit-P1-leaflet.**

**31.1 As we have also discussed above, there is no evidence at all to prove that Exhibit-P1-leaflet was printed at the instance of the first respondent. One Haseeb, who placed the order for printing of Exhibit-P1 is not examined. Shri Hamza, who is said to be the Manager of the Press at the relevant time, was not examined. Shri Mustafa, who is said to have told the appellant that the expenses for the printing of Exhibit-P1 were borne by the first respondent and the same have been shown in the electoral return of the first respondent is also not examined. No evidence of the electoral returns pertaining to the expenditure on printing of Exhibit-P1 by the first respondent is available.**

**31.2 The allegation in the election petition is on printing of 25,000 copies of Exhibit-P1. The evidence available on record is only with regard to printing of 1,000 copies. According to PW-24- Sajid, 21 bundles of Exhibit-P1 were kept in the house of first respondent as directed by wife of the first respondent. She is also not**

examined. It is significant to note that Sajid's version, as above, is not the case pleaded in the petition; it is an improvement in the examination.

**31.3** There is further allegation that PW-7-Arjun and PW-9-Faizal had seen bundles of Exhibit-P1 being taken in two jeeps bearing registration nos. KL 13B 3159 and KL 10J 5992 from the residence of first respondent. For one thing, it has to be seen that PW-7-Arjun was an election worker of the appellant and Panchayat Secretary of DYFI, the youth wing of CPI(M) and the member of the local committee of the said party of Edavanna and Faizal is his friend. PW-29 is one Joy, driver of jeep bearing registration no. KL 10J 5992. He has completely denied of any such material like Exhibit-P1 being transported by him in the jeep. It is also significant to note that neither PW-7-Arjun nor PW-9-Faizal has a case that the copies of Exhibit-P1 were taken from the house of the first respondent. Their only case is that the vehicles were coming from the house of the first respondent and PW-4- Palliparamban Aboobakar gave them the copies. PW-4 has denied it. It is also interesting to note that PW-9-Faizal has stated in evidence that he was disclosing the same for the first time in court regarding the receipt of notice from PW-4. It is also relevant to note that in Annexure-P3- complaint filed by the chief electoral agent of the appellant on 13.04.2011, there is no reference to the number of copies of Exhibit-P1- leaflet, days when the same were distributed and the people who distributed the same, etc., and most importantly, there is no allegation at all in Annexure-P3 that the said leaflet was printed by the first respondent or with his consent. The only allegation is on knowledge and connivance on the part of the first respondent.

**31.4** We have already held that knowledge and connivance is different from consent. Consent is the requirement for constituting corrupt practice under Section 123(4) of the RP Act. In such circumstances, it cannot be said that there is a complete chain of circumstances which would lead to a reasonable inference on consent by the first respondent with regard to printing of Exhibit-P1-leaflet. Not only that there are missing links, the evidence available is also not cogent and credible on the consent aspect of first respondent."

**151.** So far as respondent No.1 is concerned, there is absolutely no evidence to connect him with distribution of liquor if any the liquor was issued from warehouse Kukshi, no evidence is produced by the petitioner and no record was called to show payment of liquor by respondent No.1 that would have been best evidence to show that liquor was issued to the contractor Yogesh Gautam and payment was made by respondent No.1. There was no evidence to show who made the payment. It could be presumed that Yogesh Gautam made the payment, even then, there appears to be no possible connection that could be presumed with respondent No.1.

**152.** The question of consent was also considered by Hon'ble Apex Court in case of **D.P. Mishra vs. K.N. Sharma and another AIR (1970) 2 SCC 369.** In para 16 of the judgment the Hon'ble Apex Court observed as follows:-

**“16. Thereafter in Paragraph 83 of the judgment the High Court observed that direct evidence of consent can rarely be expected and in the absence of direct evidence, the question of consent has to be determined in the light of circumstantial evidence, each case being decided on its own facts. The Court then proceeded to set out the considerations which would guide the Court in dealing with the question whether the false statements published in the newspaper supporting the candidature of the publishing candidate was with his consent and recapitulated the evidence in support of the case in relation to the three statements- Annexures I, II and III. After referring**

to the admission made by Mishra that Shyamacharan Shukla had worked for him, and the evidence that Shyamacharan Shukla was personally associated with Mishra in his campaign and had extensively toured with Mishra, the High Court recorded its finding in Paragraph 96 :

In ultimate analysis, the question of consent is one of fact and it is to be decided in each case on its facts and circumstances. Circumstances in their entirety have to be kept in view. It is the overall picture of the case which presents itself, and not isolated facts, which will guide the Court to reach the conclusion. In the present case, the cumulative effect of the respondent's closeness with the Mahakoshal and personal association with Shyamacharan Shukla for days together and the setting in which the false statements were published one after another, and the respondent not contradicting nor dissociating himself from them would have persuaded us to hold that these false statements (Annexures I, II and III) were published with the consent of the respondent.

The High Court then observed that Shyamacharan Shukla may have in his own enthusiasm published those false statements and therefore they gave the "benefit of doubt" to Mishra, with "much hesitation."

**153.** Under these circumstances, we cannot say that any liquor was distributed amongst the electors by Kamal Patel with the consent of respondent No.1.

**154.** As such, it was not proved that there was large scale distribution of liquor and it was not proved that the liquor which was seized in the territorial jurisdiction of Police Station Badgonda and which is subject matter of Criminal Case

No.925/2014 had any connection with respondent No.1.

**155.** So far as the Noticee Kamal Patel is concerned, he was given a notice under Section 99 therefore his liability for committing any corrupt practice has to be assessed.

**156.** In this case, in absence of any legal proof about large scale distribution of liquor it cannot be said that he was taking the liquor for distribution amongst the voters with a view to induce them to vote in favour of respondent No.1. It was not proved that he had committed any corrupt practice under Section 123 of the Act. This issue is decided accordingly.

**157.** Before proceeding further this Court would like to make it clear that the observation made hereinabove, were made with a view to deciding the issues involved. The observations would have no bearing on trial of the Criminal Case No.925/2014 pending before the Court of Judicial Magistrate First Class, Mhow, District- Indore.

**Issue No.7**

**158.** In view of the findings recorded by this Court with regard to issue nos. 3 to 6, it is clear that the petitioner has not been able to prove that any corrupt practice was committed by respondent No.1 and Noticee No.1 Shivraj Singh Chouhan and Noticee No.2 Kamal Patel. In this situation the petition deserves to be dismissed.

**159.** Accordingly, the petition is hereby dismissed. The petitioner shall bear his own costs and costs of the respondent No.1 and Noticee Nos.1 and 2.

**160.** The Registry is directed to send an authenticated copy of this order to the Election Commission of India and Speaker of Madhya Pradesh Legislative Assembly as provided for by Section 103 of the Representation of People Act, 1951, at the earliest. Registry is also directed to transmit record of Criminal Case No.925/2014 to the court concerned without delay. The articles received from Principal Registrar of this Court which were kept for safe custody with him which were received back for viewing for the purpose of writing this order are resealed and kept in the record.

Before parting with the order, this Court would like to express its gratitude towards Shri R.S. Chhabra, learned counsel for the petitioner, for the efforts that he took in preparation of private paper-book and preparation of synopsis and issue-wise written final arguments. The paper-book and synopsis, prepared by him, helped to a great deal in dealing with large volume of record that was submitted before the Court.

Certified copy as per rules.

**(Alok Verma)**  
**Judge**